IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. .....

GEORGE J. ADAMS AND A. W. KITCHEN, CO-PARTNERS TRADING AS ADAMS & KITCHEN, ET AL.,

Petitioners,

vs.

ANDREW W. MELLON, DIRECTOR GENERAL OF RAILROADS, ETC., ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

CERTIFIED EXCERPTS FROM ORIGINAL EXHIBITS WHICH ORIGINAL EXHIBITS ARE TRANSMITTED TO THIS COURT PURSUANT TO ORDER OF UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

EXCERPTS FROM ORIGINAL EXHIBIT No. 6, PAGES 10 TO 38, BOTH INCLUSIVE.

"Mr. Shaw: It seems to me possibly a very brief statement would enable us to appreciate the position which has been taken by the various gentlemen up to the present time very much more intelligently than by a haphazard discussion. With your permission I will make a brief statement.

Examiner Thurtell: I will be very glad to hear it.

Mr. Shaw: On behalf of the Union Stock Yard & Transit Company of Chicago. This corporation was organized in 1865 under a special charter of the State of Illinois, which gave it a right to conduct many different activities, with only two of which we are concerned this morning. These two were the activity of conducting a stock yards business and the other the activity of conducting a railroad connecting all the railroads entering Chicago with the stock yards plant.

The corporation proceeded to build its stock yards, construct its railroad and conduct both activities.

At the time of its creation, it was constructed primarily and only by the various railroads entering Chi-

"cago. The officers of the railroads entering into Chicago were the directors of the Transit Company.

In the year 1867 the officers of the railroads, who were acting in their capacity as directors of the Stock Yards Company imposed a charge upon the railroads entering Chicago of 25 cents a car for unloading live stock and 50 cents a car for loading live stock at the stock yards plant, and the railroads paid that charge from that time down to this.

In the meanwhile, as the years went on, the Stock Yards Company divorced itself of its railroad and the railroad which it formerly owned and operated is now under a lease in perpetuity to a railroad corporation under the laws of the State of Illinois, known as the Chicago Junction Railroad Company, and the Stock Yards Company, so far as the two activities which I have previously outlined are concerned, only conducts one, to-wit, its stock yards business.

The physical method of bringing stock from any point in the United States to the yards or in transporting it from the yards to any point in the United States is as follows:

Through trains of live stock are brought to the Union Stock Yards Company from points of consignment by the motive power and train crews of what we will call the line haul carriers, who deliver these cars of live stock at the stock yards plant to the chutes, which are there provided for the loading and unloading of live stock.

The engines which bring those cars in, set those cars opposite the unloading platform, switch around to the rear of the train, the stock yards employes unload the car and the same train crews which bring the trains in haul them out, in other words, the train crews of the line haul carriers, and the reverse is true of the employes of the stock yards.

"Now, while this charge has been carried, and the loading and unloading charge found its origin in the way that I have designated, as a matter of fact the service which the Stock Yards have performed and is now performing for the railroad entering Chicago consists of more than one service.

In the first place, the Stock Yards Company furnishes the terminal facilities for the loading and unloading of live stock, which otherwise the carriers would have to furnish themselves.

In the second place, the Stock Yards actually do the work of loading and unloading, the physical manual work of sending the men into the yards and handling the cattle.

In the third place, the Stock Yards acts as the collecting agent of all of the carriers who consign freight to the stock yards district; their way-bills and collection bills are presented to the Stock Yards, who collect them.

And in the fourth place, the Stock Yards not only acts as the agents for collection but they insure the collection to the carriers; they guarantee that the carriers will sustain no loss in delivering the freight without the production of bills of lading.

For the purposes of this presentation, without going into the reasons why we did it, because it may not become material, and if it does I will be glad to state it—in the year 1912, I think it was, the Stock Yards Company, which had never previously covered the charges which it made in any tariff of any kind or character whatsoever, filed a tariff at Washington, showing this charge which it made for this service, calling it an unloading tariff, but not showing the other services which were connected with it.

The carriers, which had always previously absorbed

"these charges, as I have told you, without any tariff of any kind or character, immediately put in their tariffs an absorption charge of these charges.

A few years, or may be it was a year and a half ago, the Stock Yards Company decided that the services which it was rendering was being rendered at far below cost and thereupon it increased its charges from 25 cents for unloading to 50 cents and from 50 cents for loading to 75 cents, and filed a tariff at Washington to that effect, which became effective and is now in full force and effect without any objection, and up to the present time its reasonableness has never been assailed.

The carriers, however, did not absorb the increased charges in their tariffs and it left a hiatus between our charges for what we were doing and their absorption charges.

From examining into the question I came to the conclusion that my client, possibly including myself, had blundered originally and ought never to have filed the tariff. It was an operating charge pure and simple; ought always to have been an operating charge and the more I reflected on the matter the more I have become convinced that that is true. The reasons why are not necessary to give now.

So we decided to cancel out these charges and to put the matter where it should always have remained and where it did remain for forty or fifty years, to-wit, as an operating charge.

Therefore we served a notice at Washington that we would cancel out all of our charges and in the future such services and facilities that we performed and rendered would be covered by operating agreements with the people for whom we performed them and for whom we did them.

The railroads did not object to the cancellation. The

"railroads, however, took the position that if the tariffs were cancelled altogether their absorption charges should be cancelled altogether, and they visited Washington for the purpose of getting leave to cancel their absorption charges on the day when our cancellation tariffs became effective.

Some of the shippers, particularly Swift & Company, objected not to our tariff becoming effective, but to the cancelling out of the railroads' tariffs, and as the result of a general meeting we had there in Washington they finally objected to our tariffs becoming cancelled, in order to maintain the status quo until the entire question as to who should or should not pay for these unloading services done by the stock yards had been decided by the Commission. Therefore, this proceeding here.

Now, the meaning of the statements which have been made by these various gentlemen around the table, as I gather it to be, and I will ask them whether I am correct or not, and then we will get the record absolutely straight,—Judge Cowan says so far as his clients are concerned with respect to I. & S. 1118, he has no objection to the cancellation notice now becoming effective.

Swift & Company say that so far as they are concerned with respect to I. & S. same number, they have no objection to the cancellation tariff of the Union Stock Yard & Transit Company now becoming effective.

The Chicago Live Stock Exchange states the same position.

In view of those facts, so far as I am personally concerned, I have no interest in this proceeding at all, except to get that tariff of mine effective and put it on an operating basis. The railroads never have objected thereto, as far as I can see, that it should not be done, and in that case it should disappear off the docket. Thank you.

"Mr. Norton: I would like to say one word here. It appears that the suspension was caused by the Commission itself. That being true—

Mr. Shaw: I beg your pardon.

Mr. Norton: The suspension was caused by the Commission itself.

Mr. Shaw: Not at all. You are mistaken. You were not there.

Mr. Norton: I understood from Mr. Cowan that he did not raise any objection.

Mr. Shaw: I told you just how it happened. Did not I state it correctly?

Mr. Rynder: You and I and Mr. Heinemann were there.

Mr. Norton: In accepting that statement then, that the suspension was made during a protest, as Mr. Shaw now puts it, it becomes involved in this case, and the question has been raised by our answer, as to whether the absorption relates to the rate or to a transportation matter, and that is the question which is in issue in the case and cannot be avoided by the dismissing of the suspension case.

We therefore protest against any action of the Commission toward dismissing the suspension and insist upon the two being heard together.

Examiner Thurtell: Now, am I right about this; there are just these issues before the Commission—

Mr. Shaw: That is just the I. & S. case.

Examiner Thurtell: Well, take the two cases as they stand together, what ought these loading and unloading charges to be?

Mr. Shaw: Pardon me, that is not in the case.

Mr. Norton: That is in the case as far as the carriers are concerned.

Mr. Shaw: As far as I know they have never said anything to attack the reasonableness of our charges.

"Examiner Thurtell: How about 9977?

Mr. Shaw: That question is, who should do it, but the one concerning the reasonableness of our charges is not involved in this controversy.

Mr. Norton: It is involved, by the fact that the carriers refuse to concur.

Mr. Shaw: We might just as well fight this out right now. The question is not at all as to whether our charges which we are now making and which are now in force are reasonable. The question is whether they have got to pay for them or whether the shippers have got to pay for them.

Mr. Norton: Or the question whether anybody will pay.

Mr. Rynder: I would like to add that the tariff which was suspended did not increase any charges. Mr. Shaw: Not at all.

Mr. Rynder: I did not concede it—

Examiner: Thurtell: No, I am talking about the complaint. The complaint attacks these charges. Mr. Shaw: Beg pardon?

Examiner Thurtell: The complaint attacks those charges.

Mr. Shaw: No, sir, not the reasonableness of the charges. Mr. Barnes will tell you so. Mr. Barnes: No, sir.

Mr. Shaw: It will speak for itself.

Mr. Barnes: I will make a statement of the case, Mr. Examiner.

Mr. Burgess: Their charges increased since January 1, 1910, and are included in the issues of this case surely.

Mr. Shaw: Since what? Mr. Burgess: January 1, 1910.

Mr. Shaw: It only happened a year ago.

"Mr. Burgess: I say they have been increased since January 1, 1910, and they are involved in the issues of this case. The Commission has held that the burden is on you to justify them.

Mr. Shaw: Now, the Commission is not assailing our tariff at all, the reasonableness of it. Our tariff is in effect. It is not assailed by the complaint and there has been no question—it is for the first time now suggested—that the reasonableness of the charge is now involved at all. The sole question is who shall pay for it, the railroad or the shipper.

Examiner Thurtell: How about 9977?

Mr. Shaw: 9977 raises the question who should pay it, the carrier or the shipper.

Examiner Thurtell: Here is the outline of the complaint.

> 'It is alleged that effective May 21, 1917, defendant Union Stock Yards & Transit Company increased its charges for loading and unloading live stock at the Union Stock Yards, Chicago, as follows: For loading, from 50 cents to 75 cents per car; for unloading, from 25 to 50 cents per car; that for many years the other defendant carriers have absorbed in their entirety the charges of defendant Union Stock Yards & Transit Company, but have made no provision for the absorption of the increases in said charges as aforesaid; that certain of defendants are collecting from shippers the amount of said increase in terminal charges and that the exaction of said charges constitute an increase in all the through rates on live stock to and from Chicago; that defendants absorb out of their through transportation rates all loading and unloading charges in connection with live stock shipments at all the other markets in the United States; and that by reason of the facts alleged complainant's members and patrons are subjected to the payment of rates and charges for transportation that are unreasonable, unjustly discriminatory, and unduly preferential, in violation of sections 1, 2, and 3 of the Act.

'The Commission is asked to prescribe just and reasonable rates, rules and regulations for the future. Reparation is requested.'

Mr. Shaw: Let Mr. Barnes state his own conclusions. He represents the complainant.

Mr. Barnes: Now, if the Examiner please, the facts in this care are stated by the plaintiff to be as follows:

That on December 1, 1913, the Union Stock Yard and Transit Company of Chicago cancelled the lease previously entered into on December 15, 1897, and existing between it and the Chicago Junction Railway, and entered into a new agreement with the Junction Company, under and by virtue whereof the Stock Yard Company divested itself, in perpetuity, of all property of every kind and character whatsoever, which had been covered by said prior lease, but retained for itself the loading and unloading platform and facilities used in connection with its stock yards business;

That the Stock Yards Company now owns and for many years has owned extensive yards and other facilities for the unloading, loading, storing and marketing of cattle in the City of Chicago, and that these yards have become by the action of the Stock Yard Company and the various railroad companies centering at Chicago, including the defendants, the general depot for the unloading and loading of live stock at Chicago, and that the defendants hold out to the public the said Union Stock Yards as their live stock depot in that city, and in one way and another their lines of railway connect either directly or indirectly with the platforms of the Stock Yard Company of Chicago, where said cattle are loaded and unloaded, and that they have for a long time been accustomed to and do still transport carloads of live stock to the Union Stock Yards; that the defendant carriers handling live stock to or from Chicago, Illinois,

"have for more than half a century considered the Stock Yards of the Stock Yard Company of Chicago as their terminal for the receipt and delivery of substantially all carload shipments of live stock handled to and from the City of Chicago; that the live stock hauled to and from the Union Stock Yards of Chicago by the carriers making the line haul has for more than half a century been loaded and unloaded for the carriers by the Stock Yard Company of Chicago, or its employees; that the said carriers have for more than half a century paid the said Stock Yard Company of Chicago, or its employees, for the use of their loading station, terminals and platforms and the services rendered by them in loading and unloading the said live stock, and for their services in acting as the collecting agents of the carriers named herein, and in collecting the freight charges due to the carriers named herein from members of the petitioner, who do business as consignees and dealers in live stock in and about the said Stock Yards;

That the reasons for the employment by the defendants of the live stock facilities of the Stock Yard Company are the total lack of or inadequacy of individual live stock depots and terminal facilities of the defendant carriers.

Mr. Norton: What was that?

Mr. Barnes: That the reasons for the employment by the defendants of the live stock facilities of the Stock Yard Company are the total lack of or inadequacy of individual live stock depots and terminal facilities of the defendant carriers.

Mr. Norton: The Supreme Court found in the other case you would not use them.

Mr. Barnes: I think we can prove, Mr. Norton, that your facilities are nil.

Mr. Norton: They ought to be nil. No reason for

"them. The Supreme Court so held; you would not use them if we had them. Furthermore, they are not nil.

Mr. Barnes: That is a matter for discussion.

Mr. Shaw: You would have to look for them with a magnifying glass.

Mr. Barnes: That in the performance of the services of loading and unloading live stock the Stock Yard Company acts strictly as the agent or servant of the line-haul carriers and has never performed any services for the shipper or consignee, nor has it ever looked to either shipper or consignee for its compensation for the performance of such services.

Mr. Norton: That raises the question, and we want the Commission to pass on it.

Mr. Barnes: That is my statement of my case.

That for many years the tariffs of the Stock Yard Company, which were duly published and filed with the Interstate Commerce Commission, contained the schedule of charges made by that company for the service of loading and unloading live stock at the Union Stock Yards, Chicago, which were as follows:

For loading—50 cents per car of any capacity;

For unloading—25 cents per car of any capacity; that the aforesaid loading and unloading charges were last named and published in the Stock Yard Company's tariff U. S. Y. & T. Co., No. 2, I. C. C. No. 2, effective June 30, 19, and which tariff of rates continued in effect until M 1917, when the said terminal charges were increased to the following amounts, as per Stock Yard Company's Tariff U. S. Y. & T. Co., No. 2, I. C. C. No. 2:

For loading—75 cents per car of any capacity;

For unloading—50 cents per car of any capacity; that the aforesaid tariff having been incorrectly designated with respect to the proper reference numbers, an-

"other tariff was issued by said company on April 30, 1917, and effective June 21, 1917, known and designated as U. S. Y. & T. Co., Tariff No. 3, I. C. C. No. 6, which in form and substance read as follows:

Examiner Thurtell: Right there, this tariff that went into effect on June 21, 1917, increasing the loading and unloading charges, I understand that the railroad did not at the same time publish new absorptions respecting them.

Mr. Barnes: No, I will come to that in a moment.

Examiner Thurtell: I want you to tell us what the practice has been, who has been paying these loading and unloading charges.

Mr. Barnes: I will come to that. Examiner Thurtell: All right.

Mr. Barnes: I will come to the whole matter. Here is the way this tariff read:

> 'The charge made by this Company for the service (as a carrier's agent) of loading and unloading Live Stock at the Union Stock Yards, of Chicago, Ill., is as follows:
>
> For loading—75 cents per car of any capacity;
> For unloading—50 cents per car of any capacity.'

That thereafter the said Union Stock Yard and Transit Company of Chicago filed its supplement to said last-mentioned tariff, in and by which it proposed to withdraw and cancel said last-mentioned tariff, which said cancellation and withdrawal, would the terms thereof, have become effective on September 1, 1917, and which said proposed cancellation notice is in words and figures following:

> 'Effective September 1, 1917, U. S. Y. & T. Co. Tariff No. 3 I. C. C. No. 6, will be withdrawn and cancelled. The loading and unloading platforms of the Union Stock Yard & Transit Company of Chicago will in future be used or available for use by the railways entering Chicago, and using them as terminal stations, under operating arrangements.'

"That in compliance with Investigation and Suspension Docket No. 1118 of the Interstate Commerce Commission of August 24, 1917, the effective date of Supplement No. 1, U. S. Y. & T. C. Tariff No. 3, I. C. C. No. 6, cancelling the said tariff, was postponed by action of the Interstate Commerce Commission until December 30, 1917, and the said tariff ordered to remain in effect during said period of suspension, and later, to-wit, at hearings held before Examiner Markley, at Chicago, on November 8, 1917, and November 19, 1917, a further extension by suspension agreement to, by and between all interested parties.

That simultaneously with the filing of said notice of cancellation, said Stock Yard Company of Chicago notified each of the common carriers entering the City of Chicago, the defendant carriers herein, that the Directors had determined to cancel and have cancelled their tariff heretofore filed with the Interstate Commerce Commission, and have determined to make a rental charge for the terminal facilities furnished to and used by the lines carrying live stock to and from the Chicago market and to place their said facilities upon an operating basis;

That the tariffs published by the defendant carriers or their duly authorized agents and naming rates for the transportation of live stock (of various kinds the subject matter of this complaint) to and from the Union Stock Yards, Chicago, Illinois, are generally governed, so far as the Chicago Terminal charges are concerned, by L. A. Lowrey, Agent's Tariff, No. 20-J, I. C. C. No. 37, and supplements thereto and reissues thereof, and were so governed prior to this complaint by cancelled issues of said Lowrey's Tariff.

That all of the defendants other than the Stock Yard Company are parties to or concur in L. A. Lowrey,

"Agent's Tariff, No. 20-J, I. C. C. No. 37, which, on page 72 thereof, provides the basis for rates to and from facilities of the Chicago Junction Railway and for the absorption of the loading, unloading and weighing charges of the Stock Yard Company, by stating that the carriers shown (all of whom are defendants herein) will pay the Stock Yard Company's charges, as follows:

Loading charge, 50 cents per car;

Unloading charge, 25 cents per car;

That for many years the amount of the terminal charges absorbed by the defendant carriers herein exactly corresponded with the amounts charged by the Stock Yard Company, but that on May 21, 1917, when the said Company's Tariff No. 2, I. C. C. No. 2, became effective, which increased the loading and unloading charges from 25 cents and 50 cents per car, respectively, to 50 cents and 75 cents per car, no corresponding change was made in the aforesaid L. A. Lowrey, Agent's Tariff No. 20-J, I. C. C. No. 37, authorizing the absorption of the said increased charges. That although the said tariff of the Stock Yard Company carrying said increased charges provided that the charge was made for the service as the agent of the carrier, yet certain of the defendant carriers collected from the consignors and consignees shipping from and to said Union Stock Yards, Chicago, the additional 25 cents per car, which amount was and is being paid under protest pending the determination of the propriety thereof; which additional amount of twenty-five cents per car constitutes an increase in all of the rates on live stock to and from the City of Chicago, to the damage of the petitioners.

Mr. Dickinson: You say the carriers collected that?

Mr. Barnes: They assessed it and collected it through their agent, the Stock Yard Company.

"Mr. Dickinson: And they never saw their money afterwards?

Mr. Barnes: That is a matter for you to work out through your agent.

Mr. Shaw: Some of them did and some of them did not. It depends on the way they did it.

Mr. Barnes: It is there for you. It is waiting for you.

Mr. Dickinson: We have not found the man who had it and was willing to give it to us.

Mr. Barnes: Here is Mr. Shaw: Mr. Dickinson: He won't give it up.

Mr. Barnes: That the transportation of live stock does not terminate until after the stock has been unloaded by the carrier into suitable pens; that the duty to unload live stock into suitable pens includes the duty of the carrier to provide such facilities and the means of reaching them, or else to hire those owned by others; that this is the rule of the common law and also provided for by Section 1 of the Act to Regulate Commerce, wherein the term "transportation" is defined to include all services in connection with the receipt, delivery and handling of property transported.

That it being the duty of the defendant common carrier to provide and maintain all adequate and necessary terminal facilities for the receipt and delivery of live stock in the City of Chicago and to perform the loading and unloading services without additional charge, the plaintiff is not interested in the amounts paid by it to the agency hired by it to perform such services or in the amounts charged it by its agent for the performance of such services, excepting in so far as the carrier maintains a tariff arrangement which forces the consignee to bear a portion of such terminal cost, as it does so operate in this case;

"That regardless of whether or not the Union Stock Yard and Transit Company is permitted by the Commission to cancel its tariffs covering these terminal services, and regardless of the carrier's legal duty to perform or accord these terminal services as a part of the transportation without additional charge, the charges for these terminal services performed by the Stock Yard Company are now absorbed and have for years been absorbed by the line-haul carriers. By virtue of the said L. A. Lowrey, Agent's Tariff, on file with the Commission, the amount of absorption is limited to fifty cents (50c) per car for loading and twenty-five cents (25c) per car for unloading; that the rule in the absorption tariff results in the carrier only performing its legal obligation *pro tanto,* resulting in the remaining 25 cents per car being charged against the consignee;

That is the application of that Lowrey Tariff as it stands now. It says in specific terms that they will absorb but 50 and 25 cents of the Stock Yard Company charge. That result in the carrier only performing its legal duty in loading and unloading to that extent, not 100 per cent of its legal duty, but simply 25 and 50 cents worth of its legal duty.

Mr. Dickinson: It is not its legal duty to load and unload.

Mr. Barnes: That is a matter for judicial determination.

In other words, although the defendant carriers hire the Stock Yard Company to perform these terminal services for them, in obedience to their legal obligation to so accord such services to the shipper, yet by reason of the peculiar construction of the Lowrey Tariff the shipping public is not guaranteed to the full enjoyment of those services without the payment of additional charge;

"That such increased charge of 25 cents per car is unjust and unreasonable and unjustly discriminatory and unduly preferential and prejudicial, to the damage of the shippers and consignees.

That is the plaintiff's case.

Mr. Burgess: May I make this statement, Mr. Examiner, in reference to the statement that has already been made about the 25 cent increased charge not being in issue in this proceeding.

It is my understanding under Section 15 of the act to regulate commerce that when a rate has been increased since January 1, 1910, has been brought in issue, that the burden of proof is on the carrier which has increased the rate.

This rate is surely in issue in this case. It is the crux of the whole business, who shall pay for it, and it certainly is in issue.

The carrier which increased the rate by its published tariff with this Commission was the Union Stock Yard & Transit Company. True, on one of its issues it put on the face of it as carrier's agent, but it had no power of attorney from the other carriers to publish their tariff. It showed no concurrencies of other carriers in its tariff and it and it alone is the carrier that increased its charge and it is our position that on it and on it alone is the burden of proof as to the propriety of the increase.

Mr. Cowan: If they want to withdraw it, what objection have you to it?

Mr. Norton: We have this objection.

Mr. Cowan: I would like to hear it.

Mr. Nortion: In paragraph 12 of the complaint which was filed, the complainant, which is an association of brokers, handlers, of live stock on commission at the

"yards,—that is correct, is it not? Mr. Shaw: That is correct.

Mr. Norton: That association of brokers say: 'The defendant carriers are absorbing all loading and unloading charges for all of the cattle and live stock markets of the United States out of their transportation rates.'

That is not true. We have denied that. Probably we shall show in getting up the data that 90 per cent of our live stock is loaded and unloaded by shippers in various parts of the country; that at a few of these centers like Chicago and Kansas City a preference is shown by absorptions which have heretofore been made and which we now seek in this case to be rid of.

Mr. Barnes: That is 90 per cent of the local market?

Mr. Norton: The 90 per cent is the loading and unloading of live stock for any purposes and for all places throughout the United States.

But in these markets where the large concerns are operating the carriers have in the past and are now absorbing in Chicago 25 cents for loading and unloading for the performance of a service which the carrier is not required to perform.

It should not load and unload live stock any more than grain or any other carload commodity, and it does not do so except in centers like Chicago.

Now, these dealers out here at the yard seemed to be worried about this status of the Stock Yard Company, with which they ought to have no concern, so far as I can see.

This is what they say: 'That the action of the defendant carriers in adding to their transportation rates the additional charge of 25 cents per car for the loading and unloading service on live stock to and from the Chicago Live Stock Market, located at the Union

'Stock Yards, Chicago, Illinois, while absorbing such charges at all competing markets'—, there you see the issue is raised, which cannot be avoided under the act, the issue of discrimination—'while absorbing such charges at all competing markets, results in an unjust discrimination against complainant's members and patrons and gives to competing markets an undue and unreasonable preference and advantage over the Chicago market which results in much business that was heretofore handled through the Chicago market being diverted to competing markets that are free from such harmful practices of the defendants.

'Paragraph 13. That by reason of the facts stated in the foregoing petition complainant's members and patrons are subjected to the payment of rates and charges for the Interstate transportation aforesaid that are unjust and unreasonable.'

Now, I do not know whether counsel for the complainant answered your question or not, but the fact at the present time is that the additional charge is being paid by the shippers so far as the rate is concerned, so that the shipping public have now placed upon them an additional charge and nobody can pass upon that but the Interstate Commerce Commission.

Mr. Barnes: Mr. Nortion, we are not contending for the unreasonableness of this charge *per se.*

Mr. Dickinson: You say so in your complaint.

Mr. Barnes: No.

Mr. Thorne: Section 13 specifically says so.

Mr. Norton: The complaint goes on further to say: '—In violation of Section 1, unjustly discriminatory in violation of Section 2 and unduly preferential and prejudicial in violation of Section 3 of the act to regulate commerce aforesaid and results in their direct damage and injury.'

There was another section I wanted to call your at-

"tention to. I thought I had it picked out. But it sets up the proposition, these commission men out there set up the proposition, which is none of their concern, that this is a transportation matter for private agreement between the carriers and the Stock Yard Company, with which the Interstate Commerce Commission has nothing to do as a rate proposition. Why should they set that up in this complaint?

Mr. Cowan: I do not see what objection you have to the Stock Yard Company withdrawing their charges as to the shippers.

Mr. Norton: I want a finding by the Commission that the absorption of any charge at Chicago on carload freight is prejudicial and discriminatory as against the loading and unloading of carload freight in other parts of the country and especially the loading and unloading of carload live stock."

EXCERPTS FROM TESTIMONY OF C. A. HENKLE, GENERAL MANAGER, UNION STOCK YARDS & TRANSIT COMPANY, ORIGINAL EXHIBIT NO. 6, PAGES 316 TO 341, BOTH INCLUSIVE.

"Mr. Barnes: Does the Stock Yard Company act as a collection agent for the delivering carriers in collecting the freight charges from the consignees on the live stock handled at the Union Stock Yards?

Mr. Henkle: Yes, sir.

Mr. Barnes: Will you kindly explain briefly the method that is employed with reference to the collection of those freight charges?

Mr. Henkle: Shall I at the same time state the other duties we are carrying on?

"Mr. Barnes: What method do you use for the purpose of collecting these freight charges and other charges from the consignees located at the stock yards?

Mr. Henkle: The bills are delivered by the conductors of the trains to our receiving office.

Mr. Barnes: The way-bills your refer to?

Mr. Henkle: The way-bills and then forwarded to the—I can cover that with some other points by reading this statement. Mr. Barnes: All right.

Mr. Henkle: The trunk line or railway carrier in completing its haul to billed destination, such billed destination being a commission firm located within the confines of the Union Stock Yards District, hauls the train of live stock to the chutes of this company with its own power and its own train crew.

When trains are set at the unloading chutes, the conductor in charge of the respective trains take the way-bills and the attached live stock stubs and passes them through a window to a clerk in the division office, who in turn hands them to an employee of said office, in the order in which received, who calls the car number, contents, and consignee from the pulpit to the waiting commission men's employees, thus giving notice of the arrival of the stock to such commission men's employees as are present at this calling.

The stubs are then turned back into the division office, where record is made in the Yard Book, which is the official record of the receipt of the respective cars contained in any one train. At the same time a bulletin is written, showing the consignor, consignee, car number and contents of the car by classes of animals (Cattle, horses, hogs, or sheep), which bulletin is posted in the assembly room of the division office for the information of such commission men's representatives who were not present at the reading of the way-bills from the pulpit.

"Meanwhile the cars are being unloaded by Stock Yards employees across the platforms and into the receiving chutes of the U. S. Y. & T. Co., and record is then taken of each car, designating the chute into which the stock is unloaded.

Subsequent to placing the stock in the chute pens an actual count of the contents of each car is made, and notations made as to the dead, cripples, class of animals (cattle, hogs, sheep, horses) and the number of live animals unloaded from any given car.

The animals are subsequenutly delivered to the commission men direct from the chute pens, or are yarded by the U. S. Y. & T. Company into locations provided by said company for the use of the various commission firms.

To revert to the handling of the way-bills. After the permanent record is made, these way-bills and live stock stubs are delivered by messenger to the respective railroad company's local representative, who in turn forwards them to the Western Weighing Association Bureau for the purpose of securing the actual weight of the contents, which is obtained by the Western Weighing Association from the commission merchant who sells the particular animal for consignor's account, the said Association transmitting the respective way-bills and stubs to such commission merchant.

Subsequent to this a list of the car number, number of animals contained in the car, and giving the condition, is sent to the Western Weighing Association for the purpose of their engrossing upon the stubs the animals contained in each car, to permit of the correct assessment of yardage charge in the accounting office.

After the information as to the correct weight is inserted on the live stock stubs by commission men, the stubs are again sent to the Western Weighing Associa-

"tion, and are in turn sent back to the railroad agent for final revision.

After the final revision is made, they are sent to the accounting office, where the debits and credits evidencing the amount due from the commission men and to the railroads are recorded.

Collections are made from commission men twice a week—Monday and Thursday.

We pay the railroads their freight charges once a week—every Monday morning.

Prior to the issuance of the U. S. Y. & T. Co. tariff raising our unloading charge from 25 cents to 50 cents, and our loading charge from 50 cents to 75 cents, it was our custom to collect from the carrier our established charge by monthly bill.

After the issuance of the U. S. Y & T. Company's tariff raising the charges, as aforesaid, this company was given to understand at various conferences and by direct advice from Local Agents that the carriers would refuse to pay in accordance with the said tariff.

Whereupon, to insure collection of our published tariff charges it was decided to withhold the amount due this company from the weekly settlements with the railroad carriers.

Mr. Shaw: Pardon me, but back there where you read, is that clerk in the division office an employee of the Stock Yard Company? Mr. Henkle: Yes.

Mr. Dickinson: Mr. Shaw, is any evidence going to be offered here to support the reasonableness of the increased charge?

Mr. Shaw: I do not know how the complainants are going to make out their case. I will answer that question the instant the petitioner gets through with his case.

"Mr. Barnes; I will make my statement to that effect as soon as I go to rest, Mr. Examiner.

Mr. Dickinson: Are officers of the Union Stock Yard & Transit Company—

Mr. Shaw: If you want me to explain—are you through with this witness, Mr. Barnes? Mr. Barnes: Yes.

Mr. Shaw: Then let me examine him a minute.

Mr. Barnes: No, I am not, Mr. Shaw; I intended to resume after he got through.

Mr. Henkle, is this two dollars switching charge also added to the carrier's transportation charges and collected from the consignee?

Mr. Henkle: The two dollar terminal charge is. Mr. Barnes: Yes.

Mr. Henkle: Yes, sir.

Mr. Barnes: And in addition to that your loading and unloading charges? Mr. Henkle: Yes, sir.

Mr. Barnes: What loading and unloading charge is added now?

Mr. Henkle: Just a moment on that last question. Please put the question again.

Mr. Barnes: Are you adding any charge to the carrier's freight bill for loading and unloading service? Mr. Henkle: No, sir.

Mr. Barnes: None whatever.

Mr. Henkle: We do not. We collect the bills as delivered to us by the railroads and as made out by them.

Mr. Barnes: Are you collecting any charge from the consignee for the service of loading and unloading at the present time?

Mr. Henkle: Most of the roads are showing an additional charge.

Mr. Barnes: On their freight bills?

"Mr. Henkle: On their freight bills. Mr. Chase can give you more definite information on that.

Mr. Dickinson: Is he going on the stand? Mr. Henkle: I believe so.

Mr. Barnes: Is Mr. Chase present? Mr. Shaw: He is in the room.

Mr. Dickinson: I just wanted to clear it up now, as long as you bring it up.

Mr. Shaw: I will clear that up, when I get to my examination.

Mr. Barnes: You say you cannot answer that question?

Mr. Henkle: I have answered the question, that we are collecting for most of the roads an additional 25 cents.

Mr. Barnes: That clears up the point.

Mr. Shaw: I will clear that up if you let me alone.

Mr. Dickinson: It is not a question of clearing it up. It is having him state the facts.

Mr. Barnes: Take the witness, Mr. Shaw.

Mr. Shaw: Mr. Henkle, when a live stock train is brought in under the crew of the line carrier and stationed at the unloading docks of the stock yard company the attached live stock stubs you say are passed through a window to a clerk in the division office? Mr. Henkle: Yes.

Mr. Shaw: The clerk in the division office is an employee of the Union Stock Yard & Transit Company of Chicago? Mr. Henkle: Yes.

Mr. Shaw: This clerk hands them to an employee of said office, that is, another employee of the Union Stock Yard & Transit Company of Chicago? Mr. Henkle: Yes.

Mr. Shaw: This second employee of the Union Stock

"Yard & Transit Company calls the car number, contents and consignee from the pulpit. What is the pulpit?

Mr. Henkle: It is very much like any other pulpit, a raised platform with a railing around it in the center of the receiving office, so that he is above the men that are standing on the floor in the assembly room of the receiving office.

Mr. Shaw: That is so the persons who are expecting consignments that morning can ascertain whether the particular train which is at that instance being unloaded contains their cattle or not? Mr. Henkle: Yes, sir.

Mr. Shaw: Announcements made in that way save the time of notices being sent to the officers of the various commission firms who do business at the stock yards? Mr. Henkle: Yes.

Mr. Shaw: How many of these commission firms are there that do business at the stock yards, in round numbers? Mr. Henkle: Perhaps 125.

Mr. Shaw: And how many other persons other than commission merchants are consignees of live stock arriving at the stock yards?

Mr. Henkle: Well, the great majority of stock arriving there is consigned to commission firms; but a very small percentage to others.

Mr. Shaw: 150 altogether consignees who are likely to expect stock out there in the mornings?

Mr. Henkle: Not more than that.

Mr. Shaw: So there are 150 consignees of stock who might expect to receive stock any morning at the stock yards? Mr. Henkle: Yes.

Mr. Shaw: It is to notify those people when these various trains come in that the calls are made by an employee of the Stock Yard Company?

Mr. Henkle: Yes.

Mr. Shaw: How many trains a day come to the stock

"yards on a busy day of live stock, cattle and hogs, altogether?

Mr. Henkle: We have had as high as 3 or 400 trains.

Mr. Shaw: Three or four hundred trains? Mr. Henkle: Yes.

Mr. Shaw: All unloaded in the same day?

Mr. Henkle: Loaded and unloaded in the same day.

Mr. Shaw: This stub which is handed to your division agent through a window, what is this stub?

Mr. Henkle: It is the way-bill that is carried by the conductor of the train.

Mr. Shaw: That is, the conductor of the train gives you his official document showing what his train has and transfers it to your possession? Mr. Henkle: Yes, sir.

Mr. Shaw: So that what contains the official contents of what the train had in it passes from the possession of the train conductor to the employee of the Stock Yard Company? Mr. Henkle: Yes.

Mr. Shaw: Now, you say that from this weigh bill or stub, as you call it, an entry is made in the yard book, which is the official record of the receipt of respective cars contained in any one train, that is, the yard books of the Union Stock Yard & Transit Company of Chicago? Mr. Henkle: Yes.

Mr. Shaw: Is that also kept as a record book for the railroads bringing the cars in there, subject to their inspection at any time?

Mr. Henkle: Subject to their inspection at any time.

Mr. Shaw: So they can see what cars came in on each train and were delivered to you simultaneously with the way-bill? Mr. Henkle: Yes.

Mr. Shaw: And see whether the yard book record conforms with the way-bill record?

Mr. Henkle: Yes. They could also refer to the car-

"bon copy of that book, which forms a bulletin and is hung in the assembly room.

Mr. Shaw: You say subsequent to the placing of the stock in the chute pens an actual count of the contents of each car is made and notations made as to the dead and crippled animals found? Mr. Henkle: Yes.

Mr. Shaw: Is that count made by the employees of the Stock Yards Company. Mr. Henkle: Yes.

Mr. Shaw: Do you know whether or not the railroads rely upon that for their settlement of claims for injured cattle, etc?

Mr. Henkle: They do. That is the official record. Mr. Shaw: For the railroad?

Mr. Henkle: That is the only record made.

Mr. Norton: The stock yards relies on it with respect to prices, too?

Mr. Shaw: We don't sell cattle. Mr. Henkle: We don't have any prices.

Mr. Norton: The commission merchants.

Mr. Shaw: Does the Stock Yard Company do anything with the dead or crippled animals? Mr. Henkle: No, sir.

Mr. Shaw: What becomes of the dead or crippled animals?

Mr. Henkle: The dead animals are removed by a rendering company and the crippled animals are looked after by the commission men representing the shippers.

Mr. Shaw: Who attends to sending for the rendering company to remove the dead animals?

Mr. Henkle: Those that are removed from the cars are on the platforms and the rendering company has their own employees who walk up and down these platforms.

"Mr. Shaw: Does the Stock Yard Company remove the dead animals from the cars? Mr. Henkle: Yes.

Mr. Shaw: You say after the record has been made in the permanent yard book of the cars and the car numbers, you forward them to the Western Weighing Association Bureau? Mr. Henkle: Yes.

Mr. Shaw: What is the Western Weighing Association Bureau?

Mr. Henkle: It is a bureau that I believe represents the railroads for the purpose of securing weights and checking the bills.

Mr. Shaw: Now, as a matter of fact, who weighs those cattle when they come into the yard?

Mr. Henkle: The Stock Yard Company.

Mr. Shaw: Do the railroads get their weights from the services rendered by the Stock Yard Company in weighing those cattle? Mr. Henkle: Yes, sir.

Mr. Dickinson: That is true of any freight. That is true of grain. The shipper weighs it.

Mr. Shaw: If we did not weigh it for you you would weigh it for yourself.

Mr. Burgess: Is that the only reason you have it weighed, so we may have the weights on it?

Mr. Shaw: I will answer that in just a second.

Mr. Norton: Don't ask such a hard question.

Mr. Shaw: Now, you say that the way-bills are sent to the Western Weighing Association, to have engrossed upon them the animals contained in each car to permit the correct assessment of yardage. Who takes the way-bills from the first division office to the weighing association, back to the commission men and back to the Weighing Association, the physical service of carriage of the way-bill?

Mr. Henkle: It is a stock yards employee.

Mr. Shaw: Now, after the correct information as to

"the weight is inserted by the Western Weighing Association, the way-bills are in turn sent back to the railroad agent for final revision. Who takes them to the railroad agent for final revision?

Mr. Henkle: I think a messenger of the Western Weighing Association makes that trip.

Mr. Shaw: Is all this service or work which you have heretofore described with respect to the arrival of trains or the handling of the way-bills paid for or supposed to be paid for out of the unloading charge or loading charge, as it is called, which the stock yard company receives and which is in question in this case?

Mr. Henkle: That is the only money we receive for it.

Mr. Shaw: These loading docks and chutes at which the cattle are unloaded belong to the stock yards company don't they? Mr. Henkle: Yes.

Mr. Shaw: Do you receive any compensation from the railroads for using these loading docks and platforms as their termini, except as it is included in the unloading charge which is at issue in this case? Mr. Henkle: No, sir.

Mr. Shaw: Some mention has been made here, Mr. Henkle, of the collection of freight charges. Are you familiar with the way that is done, or is it necessary to call Mr. Chase on that?

Mr. Henkle: It would probably be better to call Mr. Chase, because he handles the work directly.

Mr. Shaw: I wish you would describe very briefly what service, if any, the Stock Yard Company renders with respect to the loading of live stock, cattle and hogs, which are loaded out at the yards. What do the employees do with respect to that service?

Mr. Henkle: The employees of the Stock Yard Company collect the animals from the various parts of the

"yard and take them to the chutes and loading platforms and there load them out for the railroad companies.

Mr. Shaw: What, if anything, do the Stock Yard Company have to do with the preparation of the waybills or anything of that sort or the marking or carding of cars, if anything, for the railroads in connection with the outgoing shipments?

Mr. Henkle: I think we have nothing to do with that.

Mr. Shaw: Explain the movement of a train which is to be loaded out with an outbound shipment?

Mr. Henkle: The cars are set at what is known as our loading platforms and after the animals are collected and loaded the train is moved out either by the Chicago Junction or the line-haul carrier.

Mr. Shaw: Do you know what the arrangement of the Chicago Junction is, if it does that movement at all, with the line-haul carriers? Mr. Henkle: No, sir.

Mr. Shaw: When a load of cars come in with their own crew and power and while they are being unloaded what does the engine crew do with the engine of the train which is being unloaded?

Mr. Henkle: They usually run around the train and come up along to the other end, to be ready to pull out the empties as soon as the car is unloaded.

Mr. Shaw: And does the same engine which pulls the train in pull the empty train back? Mr. Henkle: Yes.

Mr. Shaw: After the process of unloading is completed? Mr. Henkle: Yes.

Examiner Thurtell: How long does it take you to unload a train?

Mr. Henkle: It usually takes two or three minutes to the car. If a train of thirty cars comes in we would expect to have it unloaded in about forty minutes.

Mr. Barnes: That is, provided there are no dead or crippled animals found in the cars.

"Mr. Shaw: Do you know, Mr. Henkle, that all cars to be loaded with outbound live stock are spotted by the line-haul carrier at the chute of the Stock Yard Company, or don't you know? Mr. Henkle: I don't know.

Mr. Shaw: That is all from this witness of my examination.

Mr. Barnes: One more question:

You have enumerated a number of services which the Stock Yard Company performs and for which the roads pay you a loading and unloading charge. Do you consider that any of those services are performed for the consignee at the stock yards? Mr. Henkle: No, sir.

Mr. Barnes: I will ask you if you load and unload and handle live stock at the Union Stock Yards for the following roads, which I will enumerate:

Atchison, Topeka & Santa Fe Railway Company.

Baltimore & Ohio Railway Company.

Baltimore & Ohio Chicago Terminal Railroad Company.

Chesapeake & Ohio Railway Company of Indiana.

Chicago & Alton Railroad Company.

Chicago & Eastern Illinois Railroad Company, and W. J. Jackson, receiver.

Chicago & Erie Railroad Company.

Chicago & Northwestern Railway Company.

Chicago, Burlington & Quincy Railroad Company.

Chicago Great Western Railroad Company.

Chicago, Indianapolis & Louisville Railway Company.

Chicago, Milwaukee & St. Paul Railway Company.

Chicago, Rock Island & Pacific Railway Company.

Chicago, Terre Haute & Southeastern Railway Company.

Grand Trunk Western Railway Company.

Illinois Central Railroad Company.

Indiana Harbor Belt Railroad Company.

"Michigan Central Railroad Company.

Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

New York Central Railroad Company.

New York, Chicago & St. Louis Railroad Company.

Pennsylvania Company.

Pere Marquette Railway Company.

Pittsburg, Cincinnati, Chicago & St. Louis Railroad Company.

The Wabash Railway Company.

Do you perform those services for all of those lines, Mr. Henkle?

Mr. Henkle: Yes, sir.

Mr. Barnes: That is all.

Mr. Cowan: I have a question or two.

Mr. Henkle, it appears in your tariff, I. C. C. No. 6, Union Stock Yard & Transit Company tariff No. 3, effective June 21, 1917, tariff on live stock, over your signature as general manager it reads as follows:

> 'The charge made by this company for the service, as a carrier's agent, of loading and unloading live stock at the Union Stock Yards, of Chicago, Illinois, is as follows:
>
> For loading—75 cents per car of any capacity;
>
> For unloading—50 cents per car of any capacity.'

This does not state against whom the charge is made, but you use the term that it is made for the service as a carrier's agent. Is the charge collected as agent of the carrier or for the Stock Yard Company?

Mr. Henkle: What is that question?

Mr. Cowan: Is the charge made for the Stock Yard Company or is it made as an agent of the carrier?

Mr. Connell: What carrier?

Mr. Cowan: The carriers named in the circular, as a carrier's agent.

"Mr. Henkle: We make the charge against the carrier for the Stock Yard Company.

Mr. Dickinson: That was not the question. Mr. Shaw: That is an answer.

Mr. Dickinson: He wanted to know whether it was made for the benefit of the Stock Yard Company or the benefit of the carrier?

Mr. Cowan: I did not use the term "benefit". I will read the expression again: "The charge made by this company for the service (as a carrier's agent) of loading and unloading," and so forth. Is that charge made for the Stock Yard Company or for the carrier as the agent of the carrier?

Mr. Shaw: I submit he has answered the question.

Mr. Henkle: Does not my answer that the charges made against the carrier for the Stock Yards Company do?

Mr. Dickinson: I thought you said you made this charge against the shipper. Mr. Henkle: Against the shipper?

Mr. Dickinson: To the extent of 25 cents, you said you collected it from the shipper or consignee.

Mr. Henkle: We collected it through the commission men. Mr. Dickinson: He is the consignee, isn't he? Mr. Henkle: Yes.

Mr. Dickinson: And you keep it? Mr. Henkle: No.

Mr. Dickinson: After you collect it? Mr. Henkle: No.

Mr. Dickinson: What do you do with it? Mr. Henkle: Give it to you.

Mr. Dickinson: 25 cents a car? Mr. Henkle: Yes.

Mr. Burgess: We never have had it. That is the only trouble with it.

Mr. Cowan: Jones has paid it.

Mr. Henkle: You are going to get it.

"Mr. Burgess: I hope so.

Mr. Henkle: We don't want the 25 cents.

Mr. Dickinson: How long have you been making this collection?

Mr. Shaw: Wait a second. I want to object to that.

Mr. Dickinson: Are you through with him on your examination?

Mr. Shaw: Yes. But he was not interrogated about that point. We have the auditor here, who will indulge in persiflage with these gentlemen all afternoon.

Examiner Thurtell: No he won't. We are going to stop this persiflage pretty soon. There really is no occasion for this. It is perfectly plain what is done. That this fifty cents is collected as it stands now—you say you collect it as an agent for the railway company? Mr. Shaw: Exactly.

Examiner Thurtell: And that you turn it over to them, but you charge them fifty cents. They say you keep this fifty cents yourself. It does not make any difference whether you keep this fifty cents or some other fifty cents. You do keep fifty cents out of the charge, and that has been perfectly apparent for twenty-four hours.

Mr. Cowan: Do you make any charge against the shipper direct for the Stock Yards Company except in making the charge as a carrier's agent? Mr. Henkle: No, sir."

EXCERPTS FROM TESTIMONY OF H. W. BEYERS, ASSISTANT FREIGHT TRAFFIC MANAGER, CHICAGO & NORTH WESTERN RAILROAD, ORIGINAL EXHIBIT NO. 6, PAGES 472 TO 476; 496 TO 498; 504 TO 512; 535 TO 539; 542 TO 544, ALL INCLUSIVE.

Pages 472 to 476, both inclusive:

"Mr. Barnes: Mr. Beyers, with reference to the charges on cars of live stock that come into the Union Stock Yards, would you deem it a practical matter for your roads to undertake the collection of charges on all those cars?

Mr. Beyers: Yes, we could do it. I think we could.

Mr. Barnes: Have you had any experience with the collection of those charges?

Mr. Beyers: No, but not a great while ago, we were prepared to go ahead along those lines with other carriers, under an organization that we thought we could perfect and could handle the business to our entire satisfaction.

Mr. Barnes: Why didn't you go into the plan?

Mr. Beyers: We sort of ran into a white flag between your company and others.

Mr. Dickinson: You mean Mr. Shaw's Company.

Mr. Beyers: The Union Stock Yard & Transit Company.

Mr. Dickinson: This gentleman hasn't any company.

Mr. Beyers: Also the Chicago Live Stock Exchange.

Mr. Barnes: You mean you got together?

Mr. Beyers: We had the accountants meet and they

"decided amongst themselves, with the Union Stock Yard & Transit Company, upon a method to proceed, with a view of satisfying all interests under the tariffs, as they existed.

Mr. Barnés: Isn't it true that you did not proceed with your plan because you found out certain phases of the situation that made it wholly impractical?

Mr. Beyers: No, I do not so understand that. Perhaps I had better recite what caused us to think we had better make our own collections.

The Union Stock Yard & Transit Company originally withheld twenty-five cents a car of our money, and when they insisted the carrier must pay this advance, even though their tariff on file with the Interstate Commerce Commission seemed to indicate to the contrary or did indicate to the contrary, we decided to go ahead and make our own collections, and our auditors were so instructed.

Subsequently, a meeting was held with the various interests and the Union Stock Yard & Transit Company, and it was agreed that when we submitted our stubs indicating the total freight charges due us, we would add this twenty-five cents; that that would be satisfactory to the U. S. Y. & T. Co. and that, with the twenty-five cent absorption provided for, would make the fifty cents they were asking for their service.

Mr. Shaw: Who did you have that conference with? With the Union Stock Yard & Transit Company?

Mr. Beyers: Mr. Shaw, I think I have the record here; I am speaking now of a conference between the Chicago—

Mr. Shaw: I did not mean to interrupt you. I beg your pardon. I will ask the question later on, Mr. Beyers.

Mr. Beyers: The understanding was that we would

"show on our stubs "unloading charges as per U. S. Y. & T. Co. I. C. C. No. 2, 50 cents less absorption authorized in Lowrey's I. C. C. No. 26, 25 cents, leaving for collection 25 cents."

After we reached that understanding, we decided not to go ahead with the plan of making separate collections.

Mr. Dickinson: You mean of your freight charges?

Mr. Beyers: Of our freight charges, from the commission merchants. Now, from the packers, we make our collections direct.

Mr. Barnes: Mr. Beyers, you spoke of a proposal to cease the absorption of these charges. Do I understand in case that occurs you will reduce the terminal charge to that extent, here in Chicago?

Mr. Dickinson: Just read that question, please.

(Question read.)

Mr. Beyers: You are referring now to the terminal charge of two dollars? Mr. Barnes: Yes, sir.

Mr. Beyers: So far as the Chicago & Northwestern Railroad is concerned, we pay trackage of 75 cents per car each way, and there is $1.50 there. While I would not undertake to give you the exact figures in regard to the cost of our service, I am satisfied that our service at this time will exceed 50 cents per car, so even if we were relieved of the 25 cent charge, we are now paying the Union Stock Yard & Transit Company, I would say the two dollars per car terminal charge would not be excessive, even if we were that much ahead.

Mr. Widdicombe: That is not involved anyhow. I object to that question.

Mr. Kelly: I think the whole answer ought to be stricken out as not responsive. He did not come anywhere near answering the question.

Mr. Barnes: The question I asked Mr. Beyers was if

"you put into execution your plan to cease absorbing this terminal charge, this unloading charge, would you reduce the two dollars terminal to that extent?

Mr. Widdicombe: I object to that as being immaterial and not involved in the issues in this case.

Examiner Thurtell: He has answered the question.

Mr. Barnes: What was the answer?

Examiner Thurtell: So far as the attitude of the Northwestern is concerned, his attitude is he does not think they would do so, isn't that the purport of your answer?

Mr. Beyers: Yes, sir. Mr. Barnes: That is all."

Pages 496 to 498, Both Inclusive.

"Mr. Beyers: We got up to the point where we reached an understanding with your company, that made it possible for us to conserve our revenue and not have you withhold the 25 cents.

Mr. Shaw: Now, what was the understanding, as you call it?

Mr. Beyers: Well, the understanding was, as I explained it a little while ago, that we were to show on our bills that we handed to you, that the unloading charges as per U. S. Y. & T. Co. No. 2, were 50 cents.

Mr. Shaw: Now, isn't it a fact—

Mr. Norton: Let him answer it.

Mr. Shaw: I didn't mean to interrupt him, but let his own counsel take care of him.

Mr. Widdicombe: He can take care of himself, I think, if you will let him alone. Mr. Shaw: Go ahead.

Mr. Beyers: (Continuing) Less absorption, authorized in Lowrey's I. C. C. 26, 25 cents, leaving for collection 25 cents.

Mr. Shaw: You don't think that extra 25 cents ought to be charged against you? Mr. Beyers: Not against us, no.

"Mr. Shaw: And you know that we said to you that if we continued to collect those bills for you that we would take it out of you, whether you agreed to it or not.

Mr. Beyers: That we would take it out?

Mr. Shaw: That we would take out the 25 cents whether you plussed the bill or not. Mr. Beyers: Yes, that was in May.

Mr. Shaw: So that in May, 1917, you had the option of going down and collecting your own bills, in which event we could not take it out, could we? Mr. Beyers: No. sir.

Mr. Shaw: You didn't do it? Mr. Beyers: No, sir.

Mr. Shaw: On the contrary, rather than go to the trouble of collecting your bills, you preferred to plus your bills 25 cents and still give them to us for collection, did you not?

Mr. Beyers: Well, it was an amicable adjustment of differences that existed at that time.

Mr. Shaw: That is what you did. Mr. Beyers: Yes, sir."

Pages 504 to 512, Both Inclusive.

"Mr. Beyers: We have always understood that the trackage charge included the use of the facilities of the Chicago Junction Railway, as a delivering terminal carrier.

Mr. Shaw: Did you ever have any agreement of that character in writing?

Mr. Beyers: I could not answer that.

Mr. Shaw: Now, as a matter of fact, the Stock Yards Company did the unloading under a separate charge, payable by your company to that company, ever since you have known anything about it, hasn't it? Mr. Beyers: Yes.

Mr. Shaw: And you have paid a different charge to

"the owner of the rails, ever since you have known anything about it, haven't you?

Mr. Beyers: Well, we considered the two as one company.

Mr. Shaw: I don't care how you considered them; you paid it as a fact.

Mr. Beyers: Yes, sir, as one company we were dealing with.

Mr. Shaw: And if there were two companies,—I will change that; eliminating the possibilty that they were one and the same, which they are not, but eliminating that possibility, you do not consider it the duty of a carrier from whom you rent trackage rights to notify your consignees of the arrival of your freight do you?

Mr. Beyers: Well, now—

Mr. Shaw: You can answer that yes or no. Mr. Beyers: At what point?

Mr. Shaw: Any point in the United States.

Mr. Beyers: Well, at some points yes and some no.

Mr. Shaw: Well, where is the point yes? Mr. Beyers: At the Union Stock Yards.

Mr. Shaw: And any other place in the United States that you know of?

Mr. Beyers: It would depend on the trackage—

Mr. Shaw: Any other place in the United States that you know of?

Mr. Dickinson: He is getting pretty close to bulldozing the witness.

Mr. Shaw: It is a pretty palpable proposition that his answer is evasive.

Mr. Dickinson: Don't bull-doze the witness.

Mr. Shaw: Now, Mr. Beyers, I was asking you if you knew of any other place in the United States other than the Stock Yards where the Northwestern Railroad Company used the tracks of another company under a track-

"age arrangement, where the other company was expected to notify the consignee of the freight arriving in the Northwestern trains under Northwestern power?

Mr. Beyers: I think in the case of the Illinois & Northern, where we go over their rails under a trackage arrangement, that is the situation; we take a car and place it on the rails of the Illinois & Northern Railroad and that would end it; it would be the duty of the Illinois & Northern—

Mr. Shaw: I am not talking about placing a car on the rails of another company. I am talking about where you haul the train with your own power over the rails of another company up to the terminus of the railroad.

Mr. Beyers: Yes, in that case.

Mr. Shaw: Any other case?

Mr. Beyers: I rather think there is such a situation at Peoria.

Mr. Shaw: Now, as a general proposition it is a fact, is it not, that when a railroad company brings in freight with its own crews, and with its own power, it is supposed to send word to the shipper that the freight has arrived before demurrage begins to run.

Mr. Beyers: Yes, ordinarily I quite agree with you. There is just the point I was trying to make it clear to you that I thought at the Union Stock Yards there was an entirely different situation. Here is the Union Stock Yard & Transit Company, a part of the Chicago Junction Railway, which acts as a common carrier, and intermediary between the Chicago Junction and the consignee.

Mr. Shaw: Well, as a matter of fact, the Union Stock Yard & Transit Company and its officials do not negotiate for you with respect to trackage rights, or the movement of your trains on the Chicago Junction Railway, do they?

"Mr. Beyers: No, sir, not as such.

Mr. Shaw: And as a matter of fact there is a different general manager for each of the two companies and a different president?

Mr. Beyers: I assume there is.

Examiner Thurtell: What two companies are you referring to?

Mr. Shaw: The Chicago Junction Railway Company.

Examiner Thurtell: And what other?

Mr. Shaw: And the Union Stock Yard & Transit Company of Chicago.

Examiner Thurtell: Is the present Union Stock Yards Company still called the Union Stock Yard & Transit Company?

Mr. Shaw: Yes, sir, just exactly as they have been known since 1865.

Examiner Thurtell: Although they do not run the Transit Company?

Mr. Shaw: No, sir, although they run the yards and the hotel company there, they do not have anything to do with the railroad, any more than some truckster on the street.

Mr. Dickinson: They do just as much as they did when the Supreme Court held that they were common carriers. You have not changed your practice.

Mr. Shaw: Yes, sir, we have changed our practice considerably.

Mr. Dickinson: Well, it is in the record, then.

Mr. Shaw: Of course, it is all right for counsel to interpolate; the fact that they are both common carriers does not make them one and the same. Mr. Dickinson knows that and except for his effort to be a little irritating, he would not do it at all.

Mr. Dickinson: I beg your pardon.

"Mr. Shaw: He is too good a lawyer to try to get away with it.

Mr. Dickinson: I think the record shows it.

Mr. Shaw: He is trying to be irritating.

Now, Mr. Beyers, if the Union Stock Yard & Transit Company did not check the freight that came out of each one of these cars of live stock, and the condition of the cars, the Chicago & Northwestern Railroad Company would have to have a checker there of its own for every car it brought in, wouldn't it?

Mr. Beyers: In order to make that check, yes.

Mr. Shaw: The fact that the Union Stock Yard & Transit Company checks this freight for the Northwestern Railway Company and takes care of it, that is a considerable service to the Northwestern Railroad Company, is it not?

Mr. Beyers: Some service, yes, sir.

Mr. Shaw: Do you know of any compensation that the Northwestern Railway Company pays to the Union Stock Yard & Transit Company for this service which is rendered by the Yard Company to the railroad company, except its so-called loading and unloading charge?

Mr. Beyers: That is all we pay.

Mr. Shaw: Now, you said something about the shipper or consignee doing the loading and unloading at country points, and you also named in connection therewith, I believe, that when you delivered on the private switch tracks of certain packing houses in Iowa, they did their loading and unloading. Mr. Beyers: Yes, sir.

Mr. Shaw: There is no two dollar terminal charge there at those places, is there?

Mr. Beyers: There is no terminal line involved.

Mr. Shaw: Now, as a matter of fact, in the two dollar terminal charge, there is collected as one of the reasons for the imposition of that charge, the fact that at this

"market you do the loading and unloading, is there not? I am not saying,—do not misapprehend. I will say that I do not claim it is not sufficient: I simply say that one of the reasons for which you allow the two dollar terminal charge is that at this market your company performs the service of loading and unloading live stock.

Mr. Beyers: That is not the way I understand it.

Mr. Shaw: When you figured it up in your figures in the two dollar terminal case, didn't you show a service of loading and unloading?

Mr. Beyers: I do not understand that the two dollar terminal charge was allowed because we had to unload, if I understood your question.

Mr. Shaw: I didn't say whether you had to unload. I said because you unloaded at this market.

Mr. Beyers: I understand the two dollar terminal charge to include the 25 cents for unloading.

Mr. Shaw: Unloading? Mr. Beyers: Yes, sir.

Mr. Shaw: That is a service which you were doing at this market.

Mr. Beyers: I understand—

Mr. Shaw: There is no such terminal charge at any other market that you know of? Mr. Beyers: On live stock?

Mr. Shaw: At these small shipping places where you said the shippers loaded and unloaded. Mr. Beyers: No, sir.

Mr. Shaw: At those places you have not held yourself out for forty years as doing that service there, have you, loading and unloading?

Mr. Beyers: How do you mean that, Mr. Shaw?

Mr. Shaw: I mean that while at Chicago you have performed the service of loading and unloading since 1865, at these small places in the country where there

"may be a small chute or private switch track, you have never done it? Mr. Beyers: No, sir.

Mr. Shaw: You have always done it here.

Mr. Beyers: No, sir, you did it and we paid you for it."

Pages 535 to 539, Both Inclusive.

"Mr. Beyers: We have never been called upon to pay for the use of their facilities until this summer, when they notified us that they would discontinue their tariff; they proposed to discontinue their tariff, naming loading and unloading charges, and would make no charge for that service, but contemplated making a greater charge for the use of facilities.

Mr. Cowan: Now by the term "facilities", you mean here the place where you unload cattle out of the car onto the platform, to the chutes to go down into the pens, I presume?

Mr. Beyers: That is what I would term the facilities.

Mr. Cowan: That is the facilities for unloading.

Mr. Beyers: Facilities for unloading.

Mr. Cowan: And it is used for no other purpose, except for either unloading or loading? Mr. Beyers: Yes, sir.

Mr. Cowan: And the purpose of setting the cars there on the tracks, which you pay the trackage for, is so that the unloading will be accomplished by that means, by somebody. Somebody will do the unloading.

Mr. Beyers: That is the object.

Mr. Cowan: Now, is it your understanding that you are to do the unloading or the Chicago Junction Railway, to who you pay the trackage, is to do the unloading, or the Stock Yards Company is to do the unloading?

Mr. Beyers: It has always been my understanding that after a car of stock is placed upon the track of the

"Chicago Junction Railway serving the platforms, chute and sidings of or in the stock yards, that the unloading would be done by, as I have known it, the Union Stock Yard & Transit Company, which I figured was that part of the organization which had charge of the yards and pens.

Mr. Cowan: So you have no charge to make against the shipper for that?

Mr. Beyers: I do not know that I understand your question exactly.

Mr. Cowan: Well, as you don't do it, and we understand they do do it, you make no charge against the shipper for that? Mr. Beyers: No, sir.

Mr. Cowan: And you have never filed a tariff, so you do make a charge against the shipper for that?

Mr. Beyers: No, sir, because we never performed the service ourselves.

Mr. Cowan: Now, it seems to me we did have some controversy about who was going to collect this 25 cents, and some way or other it turned out that now the Chicago Northwestern Railroad puts that 25 cents on the billing that is turned over to the Stock Yards, is that correct?

Mr. Beyers: It is a legal charge according to the tariffs on file.

Mr. Cowan: Now, I am not asking you the legal charge. You do what I have just remarked, don't you? Put the charge on the billing you turn over, 25 cents?

Mr. Beyers: We put the total transportation charges as covered by tariffs on file with the Commisson, on the bill for collection.

Mr. Cowan: We will get to that in a moment. You put this 25 cents on the bill, don't you?

Mr. Beyers: That is included, yes, sir.

"Mr. Cowan: Your company does it? Your agents put that 25 cents on there? Mr. Beyers: Yes, sir.

Mr. Cowan: And you intend it shall be collected from the shipper when you do that?

Mr. Beyers: For the account of the Union Stock Yard & Transit Company; when we do that and so indicate on our expense bill.

Mr. Cowan: You intend it shall be collected from the shipper when you put it on the bill? Mr. Beyers: Yes, sir.

Mr. Cowan: For what? Mr. Beyers: For what it indicates.

Mr. Cowan: Well, what does it indicate?

Mr. Beyers: It indicates the charge of the Union Stock Yard & Transit Company.

Mr. Cowan: Well what concern have you to collect that?

Mr. Beyers: Why that is the common custom in the Chicago District. When it comes to handling charges covering road haul service, where the road haul carrier makes delivery to a terminal carrier, and where the terminal carrier makes the actual delivery to the consignee, in such cases the practice in the Chicago District is for the road haul carrier to show on its bills the total charge to collect of the consignee.

Mr. Cowan: Well, it is also required, as you understand it, by the Act to Regulate Commerce, that there shall be no charge made except those rates which have been filed in the tariff, is that correct?

Mr. Beyers: That is attempted, yes, sir."

Pages 542 to 544, Both Inclusive.

"Mr. Cowan: Well, suppose it did take effect, would there be any change in the method of handling the cattle? The Stock Yards Company would still handle it just the same as they do today.

"Mr. Beyers: I assume so; I don't know.

Mr. Cowan: The right to use those facilities inures by virtue of the fact, as you understand it, that you pay the charges to the Junction Railroad.

Mr. Beyers: We have not any understanding with the Chicago Junction Railway that would change the arrangement which was made when the trackage charge of 75 cents per car was agreed upon, as I have previously stated, and our president so advised President Spohr, that we assumed that this trackage charge included the use of the facilities at the stock yards.

Mr. Cowan: For unloading? Mr. Beyers: For unloading.

Mr. Cowan: And unloading?

Mr. Beyers: Now, the act of loading was a separate transaction.

Mr. Cowan: Still it include the use of facilities by you for that purpose.

Mr. Beyers: Not by us. We have never been prepared to admit that we unloaded the stock. We pay for the unloading, but the actual act of unloading has been performed by some one else, the Union Stock Yard & Transit Company.

Mr. Cowan: But you have paid 25 cents a car for it?

Mr. Beyers: For the unloading, yes, sir, we have not done the work ourselves.

Mr. Cowan: You had it done; you did talk of going down there and doing it yourselves, did you not?

Mr. Beyers: Not the unloading, no.

Mr. Cowan: When you paid for having it done, was it your service you were performing?

Mr. Beyers: I would not think so. I think it is the service that is performed entirely for the consignee.

Mr. Cowan: Why did you pay for it if it was not your business to do it?

"Mr. Beyers: Well, it is the terminal charge, Judge.

Mr. Cowan: I thought you said you got the right to the use of the facilities for unloading, for the trackage charge.

Mr. Beyers: The use of the facilities.

Mr. Cowan: You would pay somebody to do the unloading. Mr. Beyers: Yes, sir.

Mr. Cowan: Now, that is what you have been doing all the time. That is all. Mr. Widdicombe: That is all, Mr. Beyers."

EXCERPTS FROM TESTIMONY OF L. C. MAHONEY ASSISTANT GENERAL FREIGHT AGENT CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ORIGINAL EXHIBIT No. 6, PAGES 571 TO 583, BOTH INCLUSIVE.

"Mr. Mahoney: I have no figures on that, Mr. Burgess. It is true that generally speaking at the terminal markets with the exceptions I have noted, we do absorb the loading and unloading charges. Now, just what percentage of the total live stock movement that the Burlington Railroad handles is handled into these primary markets, I am not in a position to say.

Mr. Burgess: My question was as to the absorption of loading charges only.

Mr. Mahoney: Loading? Mr. Burgess: Yes, sir.

Mr. Mahoney: Pardon me, I misunderstood you. The percentage of live stock traffic handled by the Burlington Railroad on which we absorb the loading charges would be very, very small. It would only be that part of the traffic that was loaded at these primary markets, and I do not hesitate to say that the percentage of our traffic that would be handled at those markets, loaded at those markets I mean is, as I said, very, very small.

Live stock originates out in the country and is shipped to these primary markets, and it is loaded by the shipper at these country stations.

Mr. Burgess: Has your company reaped any financial

"benefit whatsoever from the increase in the loading and unloading charges as filed by the Union Stock Yards & Transit Company in its tariff with the Interstate Commerce Commission? Mr. Mahoney: No, sir.

Mr. Burgess: Did you shortly after the Union Stock Yard & Transit Company's tariff carrying these increased charges became effective, receive a request from Armour & Company that you absorb the increased charge?

Mr. Mahoney: Did you say, asking us to absorb them? Mr. Burgess: Yes.

Mr. Mahoney: Yes, sir, we did.

Mr. Burgess: In what form did you receive that request?

Mr. Mahoney: That was a letter from Armour & Company, signed by Mr. W. W. Manker.

Mr. Burgess: What date? Mr. Mahoney: May 16, 1917.

Mr. Burgess: Kindly read it.

Mr. Mahoney: It is addressed to Mr. C. E. Spens, who at that time was assistant freight traffic manager of the Chicago, Burlington & Quincy Railroad.

Mr. Norton: What is he now? Mr. Mahoney: Vice President in charge of traffic.

Mr. Norton: What is he doing?

Mr. Mahoney: Just at the present time he is connected with the Food Administration at Washington, their traffic director, but he still holds the position of vice president of the Burlington Railroad:

'DEAR SIR:

You no doubt are aware that the Union Stock Yards & Transit Co., increased their charges for loading and unloading live stock at the Union Stock Yards, Chicago, effective May 21, 1917, as follows:

For loading from 50 to 75c per car.

For unloading from 25 to 50c per car.

Has your company made arrangements to correct

'your tariff authorizing the absorption of the increased charges? If not, what action do you propose to take?

Please advise.

Yours truly,
ARMOUR & COMPANY,
W. W. MANKER.'

Mr. Burgess: What reply was made by your office?

Mr. Mahoney: Mr. Spens replied to that letter under date of May 17, 1917, as follows:

'*Mr. W. W. Manker,*
Assistant Traffic Manager,
Armour & Company,
Chicago, Illinois.

DEAR SIR:

Referring to yours of the 16th, file C-811-18, relative to increased charges for loading and unloading live stock at the Chicago Union Stock Yards.

I understand it is not the intention of any of the Chicago carriers to absorb this increase out of their earnings, but that the increase will be added to the freight charges which the shippers pay.

Yours truly,
C. E. SPENS,
Assistant Freight Traffic Manager.'

"Mr. Burgess: Mr. Mahoney, why did your company after publication of this tariff by the Union Stock Yard & Transit Company carrying these increased charges, add to the freight bills as collectible against the shipper, this amount?

Mr. Mahoney: Because we had been advised by our own legal department, and I also heard the same statement made by the legal departments of the various other carriers, and in addition to that the same opinion was expressed by a lawyer representing the Union Stock Yards Company at a conference at which I was present, that the carriers could not legally absorb the additional 25 cents, without making some correction in their tariff that was filed with the Interstate Commerce Commission.

"Mr. Burgess: You may cross examine.

Mr. Shaw: You do not refer to me when you say, "Some lawyer representing the Stock Yards," do you?

Mr. Mahoney: No, sir. Would you like to have me tell about that conference?

Mr. Shaw: Yes, I would like to have you if you would like to have me tell how that gentleman happened to be there, and how little he knew about the matter before he went.

Mr. Mahoney: I can state that he said he knew very little about the situation.

Mr. Shaw: The instant he knew about the situation of the Stock Yards Company he withdrew that opinion.

Mr. Burgess: May I ask Mr. Shaw for my information—

Mr. Shaw: More than that, he might have been mistaken about the law.

Mr. Burgess: May I ask this question for my own information?

Mr. Shaw: Of me? Mr. Burgess: Yes, sir.

Mr. Shaw: Yes, sir.

Mr. Burgess: Do you contend that the tariff as filed by you was not a lawful charge against the shipper?

Mr. Shaw: No, I contend that the tariff as filed by us was void from the beginning; it ought never to have been covered by the tariff, just the same as if it had never been filed.

Second, that if I am wrong as to that, and I do not think I am, that that tariff notified every person for whom we act as the carrier's agent, that we will charge them for that service more than we have previously charged, to the extent that the tariff increased the rates; there was notice to the carriers to that effect and they did not object to it.

We have a right under that tariff to collect from the

"same people that have been paying us since 1865, the advanced charge; that is my contention.

Mr. Burgess: Now, I do not know whether I fully understand you. My question is this,—if you do not care to answer it,—

Mr. Shaw: I will try to answer it as fairly as I can.

Mr. Burgess: I want to know for my own information, do you now contend, Mr. Shaw, that the tariff which you filed does not create a lawful charge against the shipper, as filed with the Commission?

Mr. Shaw: The tariff which we filed in my judgment, if it is a tariff at all, increases the charge to the people that have always paid us for the service, and not to the shipper; that is a fair answer, isn't it?

Mr. Burgess: I think so. Do you think it would have been lawful for the carriers,—the line-haul carriers under the tariffs as they were then filed, to have absorbed the additional charge?

Mr. Shaw: I do, and I say that for the reason first, the tariff not being properly on file at all, is the same as if it had not existed.

Second, because as carrier's agent, we did this service for these people, and if it was a lawful charge it was binding upon those for whom we performed the service and not for anybody else; that is my opinion about it.

Mr. Dickinson: I did not quite get the answer to that first question of Mr. Burgess', whether or not you considered it when it was on the files of the Interstate Commerce Commission, as necessarily a lawful charge?

Mr. Shaw: A lawful what?

Mr. Dickinson: A lawful charge; I mean by that one that had been proposed against the consignee or shipper, if the carriers' tariff did not authorize an absorption of more than 25 cents.

Mr. Shaw: I will try and answer it again. I think the tariff was void from the beginning, just the same as if

"there had been no tariff. The relationship in my judgment still existed; our filing that tariff was wholly superfluous. It is not in fact a tariff charge.

Now, if I am wrong as to that, then I say that the plain phraseology of the tariff shows that we proposed to increase the charge for the service which we rendered to those for whom we have always rendered it, to-wit, the carriers, whose agents we are, and not to any shipper in the United States.

Mr. Dickinson: Let me ask it a little differently: take the present situation as it stands, the tariffs on file with the Interstate Commerce Commission, the tariffs of the carriers authorizing only 25 cents absorption, the law requires that the lawful tariff rates be assessed against the consignee.

Is it your position that it was necessary under the law, and is now necessary under the law, to assess against the consignee on this $50 example that the Examiner has taken up this morning, a total charge of $52.25.

Mr. Shaw: I do not. I think the carriers just assessed it in order to transfer a charge which they knew they would have to pay themselves if they did not. The carriers are getting it out of the shippers right straight along; it would not have been gotten out of the shippers if it had not been done that way.

Mr. Dickinson: You still maintain after all that has been said that the carriers are getting this 25 cents?

Mr. Shaw: Yes, sir, I certainly do. They still have 25 cents more in their treasury than if they had not plussed the rate.

Mr. Dickinson: We will stand on the record on that question.

Mr. Shaw: The record for that is this: you send us your bills out there to collect. Assume the rate is $50; we would have collected the $50 rate and when we re-

"turned the money to you we would have given you $49.75. You would then have been shy a quarter, wouldn't you?

Now, you charge $50.25, and we collect out of it 25 cents, and get you back your $50. In the one instance you have $49.75, and in the other $50, and you have 25 cents extra in your treasury, and that you would not have otherwise. We gave you the option of going down there and collecting your own bills, but you did not do that because we can do it so much cheaper than you can.

Mr. Dickinson: You do not agree with the testimony of this witness that the Burlington Railroad has not benefited one cent.

Mr. Shaw: No, sir, I do not agree with that, and I think he will agree with me before I get through, after I cross examine him.

Mr. Burgess: I would like to ask you this question; whether it is your position at the time you published your tariff charge increasing the loading and unloading charges, that the shippers and the railroads were on notice that that was a void tariff?

Mr. Shaw: They were on notice to the same extent that anybody is on notice, and everybody is on notice of a wholly superfluous action.

Mr. Beyers: I am very much interested in the tariff feature of it, and if I may be permitted, I would like to ask Mr. Shaw how the shipper of a carload of live stock, by examination of the tariffs on file with the Interstate Commerce Commission, involving all of the interests that are going to handle his stock are going to know that this tariff filed by the Union Stock Yard & Transit Company is not a tariff, as you are pleased to term it.

Mr. Shaw: Well, in the same way that any inquiry,—by what I conceive to be any good lawyer, or the court itself, or anybody reading this tariff could tell that it was never intended to collect it from the shipper.

"Examiner Thurtell: What you want is a good lawyer, you see.

Mr. Shaw: I have frankly said over and over again that my company badly blundered when they ever filed the first tariff.

Mr. Beyers: How is the shipper going to know that?

Mr. Shaw: The shipper is going to know it, so far as this thing is concerned by looking at it. The charge made by this company for the service is as the carrier's agent; he has that notice, and that is notice to the carrier.

Mr. Beyers: What right did you have to set yourself up as carrier's agent?

Mr. Shaw: You have employed us ever since 1865.

Mr. Beyers: No carrier is a participant to that issue.

Mr. Shaw: The person to whom service is rendered does not have to participate in the tariff in order to make it binding upon a person; the reason we are your agent is because you employed us as that from 1865, from that date down to this.

Mr. Beyers: We are not employing you to unload.

Mr. Shaw: There is no better proof of agency could exist in the world than was created in 1867 when the railroads constructed these yards down here and then paid the Stock Yards Company 25 cents a car for doing the service."

EXCERPTS FROM ORIGINAL EXHIBIT No. 7, PAGE 861.

"Mr. Cowan: I wish to call the Examiner's attention at this time to the language in the second paragraph of the order reading:

> 'That these proceedings be, and they are hereby, reopened for further hearing, on the question of the amount of the loading and unloading charges for live stock, at the Chicago Stock Yards, and the amount of such charges, if any, that should be imposed upon shippers of live stock, or should be absorbed by the defendants and whether the Chicago Stock Yards are terminals of the Chicago Junction Railway Company, and whether the tariff arrangements between the Union Stock Yard & Transit Company and the other defendants with respect to the delivery and handling of live stock at the Union Stock Yards in Chicago are in compliance with the Act.'"

EXCERPTS FROM THE TESTIMONY OF H. R. PARK, TRAFFIC MANAGER, CHICAGO LIVE STOCK EXCHANGE, ORIGINAL EXHIBIT No. 7, PAGES 890 TO 892, BOTH INCLUSIVE.

"Q. (By Mr. Norton) Those are commission-made rates, are they?

A. Yes, sir, in tariffs properly on file with the Interstate Commerce Commission.

Q. (By Mr. Cowan) They were similarly related previous to the time the Commission passed on them, weren't they?

A. Prior to the 5 per cent and 15 per cent and 25 per cent advances that have been made, they were made by the carriers themselves.

Q. He asked if they were Commission-made rates?

"A. They are Commission-made rates after the Commission approved of the 5 per cent and 15 per cent and 25 per cent and other increases that have been added from time to time.

Q. (By Mr. Norton) Then they are Commission-approved?

A. I should say properly so, yes.

Exam. Gerry: At present they are presidentially-initiated rates.

Mr. Hillyer: What does that mean?

Mr. Helm: May I ask a question?

Q. (By Mr. Helm) What time was it that this 50 and 75 cent charge went into effect?

A. May 21, 1917.

Q. And it has been suspended by the Commission?

A. No, sir, it is in effect.

Q. (By Mr. Helm) It is in effect now, is it?

A. It has operated and been effective since that date, Judge Helm.

Q. 1917? A. Yes.

Q. Now, at that time or since that time, have there been any corresponding changes at these other markets that would restore the former relationship?

A. No, sir, other than that the carriers, I think, a couple of weeks ago, corrected their tariffs so as to absorb the loading and unloading charge at Toledo, Ohio, and I also understand there has been an official order originating at Washington unifying the tariff regulations covering the absorption of loading and unloading charges, though they seem to call them, I understand, facilities and services rendered by public stock yards to carriers."

EXCERPTS FROM TESTIMONY OF O. T. HENKLE, GENERAL MANAGER UNION STOCK YARD & TRANSIT COMPANY, ORIGINAL EXHIBIT NO. 7, PAGES 975 TO 979, BOTH INCLUSIVE.

"Q. Do you get any compensation for the use of those valuable facilities, except what you get out of this so-called loading and unloading charge? A. No, sir.

Q. That covers all of this investment, and all of the service that you render?

A. That is the only return we get on it.

Q. In addition to this return for those facilities, do these services that you render there save the carriers immense investments, far in excess of the one you just mentioned, in equipment, and engines, and matters of that kind, in your judgment?

A. They do. It would be necessary for them to have pens back of those chutes in order to be of any use to them, which I have not taken into account.

Q. And if you can unload a train in a few minutes, and release all of that equipment, fifty cars, worth $2000.00 per car at the present prices, there is another hundred thousand dollars in investment that you are saving the railroads, is it not?

A. Well, we are enabling them to use the equipment, yes.

Q. Under the tariffs these shippers are entitled to 48 hours free time, are they not?

A. I believe that is the rule on freight of all kinds.

Q. It is the same rule on this. If those shippers were not able to get the benefit of this unloading service, and

"they used up some or all of the 48 hours free time, it would necessitate the increased investment of those carriers in equipment of untold millions of dollars, would it not? A. Yes, sir.

Q. And in addition to that, there are tremendous economies in the saving of labor of train crews. A. Yes, sir.

Q. Do you know whether these team tracks in Armour & Company here belong to the Chicago Junction Railway, or whether that is on Armour's property?

A. I do not know. I imagine some of them are owned by Armour, and some by the railway.

Q. Well, if they are, if those tracks shown here from Morris and Armour are the industry tracks of those people, those interests, your answer to Mr. Norton's question would be a very simple one, would it not, that you do not want to pay them anything for the use of their own tracks. A. Yes, sir.

Q. He asked you about that, whether you expected them to compensate you for the use of those tracks.

A. I did not understand that he referred to an industry track which the industry owned and paid for, as their own track. I thought he meant on the Chicago Junction rails, up to the chutes.

Q. It is not customary, is it, for an industry which owns its own tracks to receive any compensation for the use of its industry tracks? A. No.

Q. It is a benefit to the shipper as well as the carrier. A. Yes, sir.

Q. A mutual benefit. A. Yes, sir.

Q. There is no similarity, is there, between an industry track owned by Armour & Company for the loading out of canned goods, and the tracks that you furnish down here for the unloading of live stock? A. No, sir.

Q. There is no similarity whatever?

"A. No, sir.

Q. No comparison? A. No similarity of use?

Q. No basis whatever to compare them? A. No, sir.

Q. As to these shipments that come in, that are not consigned to anybody: Mr. Brophy down there told me that that was a more or less frequent occurrence, that they had a carload of live stock on their hands, turned over to them by the railroad, that they did not know what to do with, and they just simply had to take care of it, feed it and water it. Now, when you are doing anything like that, do you regard it as a service to the railroad? A. Yes, sir.

Q. What could they do with the live stock if you did not do it for them?

A. Well, they would have to provide pens away from those unloading chutes to take care of them until the consignee appeared.

(pp. 995-998, both inclusive):

Q. Now, you perform other services, I understand, for the railroads, than the unloading of these cars. A. Yes, sir.

Q. That entails the employment of a considerable number of employees, does it not, to attend to the other service. A. Yes, sir.

Q. You collect all the freight for them, do you not? A. Yes, sir.

Q. And settle with them? A. Yes, sir.

Q. You take charge of the way-bills, or the bills of lading, do you not, or the live stock contracts, or whatever paper there is?

A. It finally passes through our hands, yes, sir.

Q. It passes through your hands? A. Yes, sir.

Q. And you check the condition of the carloads of cattle as they come in? A. Yes, sir.

Q. And make a report as to the number of dead and

"injured, or wounded, or those with any other trouble? A. Yes, sir.

Mr. Winston: They maintain a casualty station, is that what you mean?

Mr. Helm: Yes, a casualty station. The Witness: Yes.

Q. (By Mr. Helm) You do the work which gives the railroad the information upon which to base their settlement with the shippers for loss and damages, do you not? A. Yes, sir.

Q. Do you get any pay for that?

A. Nothing other than this so-called loading and unloading charge.

Q. Of 25 cents per car; is that all you get? A. 50 cents per car now.

Q. How? A. 50 cents.

Q. 50 cents per car, yes. A. That is all we get.

Q. 50 and 75. A. That is all we get.

Q. What other service do you render?

A. Mr. Examiner, in the last hearing we read a detailed statement of the services we perform.

Q. Is that in the record now?

A. That is already in the record in full, showing all of the different service that we perform.

Mr. Helm: Then I will not ask you to repeat that.

Q. (By Mr. Hillyer) Did you say that this labor cost that you show here included counting the live stock out to the consignee?

A. The delivery count, yes, sir.

Q. (By Mr. Helm) Now, Mr. Henkle, if you say that that matter is all in the record, I will not ask you to repeat it. But you say that this track, this real estate, and the tracks and improvements that are located on there—

"Mr. Winston: Now, there is no question of tracks. Do not forget that.

Q. (By Mr. Helm) —are devoted entirely to the performing of a service for the carriers in unloading their carload shipments.

A. We have in the past performed it as, as we considered it, the agent of the carriers."

EXCERPTS FROM THE TESTIMONY OF D. C. MOSIER, CHAIRMAN OF THE TRANSPORTATION COMMITTEE OF THE CHICAGO LIVE STOCK EXCHANGE, ORIGINAL EXHIBIT No. 7, PAGES 1027 TO 1032, BOTH INCLUSIVE.

"Q. You are thoroughly familiar with the conditions of unloading and loading stock?

A. Yes, sir. I started in at the yards at the chutes.

Q. As a—

A. As a yard man.

Q. What would be the practical result if the shippers should undertake to unload the live stock as it comes in?

A. For the shippers themselves?

Q. Yes.

A. I think that is a physical impossibility for the shipper himself to unload live stock. The conditions there would not allow it.

Q. I know, but take a carload of stock coming in from the country, take this train load of 44 cars on the Northwestern; about how many shippers do you suppose, on an average, would be represented in that 44 cars of stock?

A. That all depends on where that stock originates. If it is western stock it might be one man, or two; if native stock, 20 or 25. Sometimes you get in one of these cabooses and you think there is a regiment in there.

"Mr. Norton: If the Commissioner please, at the former hearing, when Mr. Winston was not present, this was fully gone into, and the statement made by the railroads that they do not expect the shippers to go into the stock yards.

The Witness: A physical impossibility.

Mr. Norton: We are not contending they ought to do that.

Mr. Winston: I simply want to bring out the fact that if the carriers insist on the shippers unloading their stock, additional facilities will have to be furnished by the carriers.

Mr. Norton: We do not insist on that. We think in view of all the money you get from the shippers, you might unload it.

Mr. Winston: Do you still contend we are getting so much money out of this charge?

Mr. Norton: No, out of the handling of the live stock, out of the 14 charges in the record in this case, the 14 charges carried in the bill.

Mr. Winston: The Supreme Court has said—

Com'r Aitchison: Let us address ourselves to the witness:

Mr. Winston: Will you read my last question, please?

(Record read as above recorded.)

Q. (By Mr. Winston): That would be an average of about ten shippers to a train load; is that a fair statement?

A. I should think so, estimated, yes, sir.

Q. And the cars come in at all hours of the night? A. Yes, sir.

Q. If those shippers were furnished platforms and loading docks and chutes, just that and nothing more, how long do you think it would take them to unload those cars? A. The 44 cars?

"Q. Yes. A. It might take them two hours and it might take them three hours.

Q. How many men usually accompany a carload of stock into Chicago?

A. There cannot over one accompany one.

Q. Could one man unload his stock shipment in that time, in two or three hours? A. Unload one car?

Q. Yes. A. Yes, sir.

Q. Then in the meantime there would be no room for any other train to come on this unloading dock. A. No, sir.

Q. What is the average time of unloading a carload of stock at the yards, under the present method?

Mr. Norton: That is objected to, as having been fully shown yesterday.

Exam. Gerry: It has been very well covered. As the Examiner noted yesterday, the Commission has already made a finding in respect of the time.

Q. (By Mr. Winston) After the shipper took the live stock into the pens, what would he do with it then?

A. Into the chute pens? Q. Yes.

A. Why, it would be impossible for him to do anything with them.

Q. Could he sell the cattle in the chute pens?

A. Not very well. Under present market conditions he could not. There are no watering facilities or feeding facilities in the chute pens.

Q. Would he have any practical method of emptying those chute pens so that another train load could come in after the first train load had been unloaded in the first three hours?

A. Do you mean for the shipper to do it? Q. Yes.

A. No, sir, he could not. In the first place, these chute pens are under lock and the Stock Yard Company would have to unlock the pen.

"Q. I am assuming the shipper had control of the pens.

A. No practical way for the shipper himself. It is a physical impossibility for the shipper to handle his own live stock coming into the yards.

Q. And if a shipper did undertake to unload his own live stock, what would the railroad company have to do besides furnishing the loading and unloading docks, from which they take it off? Would they have to count the cattle out?

A. The cattle would have to be delivered to the shipper and counted.

Q. And how about freight charges?

A. They would have to collect them from the shipper or his representative.

Q. And how about crippled animals?

A. They would have to be accounted for to the shipper. You mean the shipper to sell his own stuff?

Q. I mean the shipper should make delivery himself.

A. They would have to accounted for to the shipper.

Q. So the effect of having the shipper unload his own stock would require, first, that some unloading dock and chute pens be established at the unloading point?

A. Yes, sir.

Q. Second, that on account of the extra delay by the shipper unloading, those chute pens and docks would have to be increased considerably over what they are at the stock yards? A. Yes, sir.

Q. Third, the carriers would have to have some agents present to count out the cattle, to make delivery, get receipts, take care of the cripples and collect freight charges? A. Yes, sir.

Q. And to notify consignees? A. Yes, sir."

EXCERPTS FROM THE TESTIMONY OF A. SYKES, FARMER, IDA GROVE, IOWA, AND PRESIDENT OF THE CORN BELT MEAT PRODUCERS ASSOCIATION, ORIGINAL EXHIBIT NO. 7, PAGES 1077 TO 1091, BOTH INCLUSIVE.

"Q. There has been some time spent here with regard to free time of unloading carload freight, the law with respect to unloading live stock; you could cut that out of consideration entirely, couldn't you? It has got to be unloaded?

A. Yes, absolutely. The railroads have to unload it whether they want to or not and the shippers have to have it loaded whether they want to or not. Live stock is considered a perishable commodity and is handled as such and must be handled in that way.

Q. Now, with respect to the matter of the amount charged, assessed against the shipper; is he charged at any other market than Chicago for the extra expense the railroad is put to for unloading the live stock?

A. No, sir; the shipper is not. That is, so far as I know. Of course, he is not at the Missouri River markets.

Q. And never has been? A. No, sir; there never has been any charge against the shipper.

Q. And after the terminal charge for the use of the tracks of the stock yards was imposed, after a long fight on the two dollar terminal charge, the railroads continued to unload and absorb the unloading charge of 25 cents? A. Yes, sir.

Q. At other markets the amount is fifty cents, but in neither case is the shipper interested in the amount; that is, between the stock yard company and the railroad? A. Yes, sir.

"Q. The stock yard company, as far as the shipper is concerned, is the means whereby the railroad performs the service to the shipper, and the railroad pays for it, and as far as the shipper is concerned, that is what we are contending they should do? A. Yes.

Q. This 25 cents; do you know how it comes that the shipper has to pay this 25 cents?

A. I don't know as I quite get your question, Judge.

Q. How does it come that the shipper has got to pay this additional 25 cents put on here? There is one 25 cents here that the shipper does not have to pay?

A. Yes, absorbed by the railroads.

Q. Now, the other the shipper had to pay? A. Yes.

Q. Is it your understanding that the stock yards company does not want to collect it?

A. Yes, that is my understanding of the case.

Q. And the railroad company claims they are not levying that as against the shipper? A. Yes.

Q. So the dispute is between the Stock yards company and the railroad company as to who must pay that 25 cents?

A. That is my understanding.

Q. But the shipper is paying it? A. The shipper is paying it, yes.

Q. If the stock yards company had been permitted to have cancelled their tariff which put that 25 cents into effect you shippers would not have had to pay it?

A. No, sir; that is my understanding.

Q. And the shipper does not want to pay it? A. No.

Mr. Norton: Will the witness Cowan tell me who would have had to pay it?

The Witness: There would not have been any. I would like to say to you, in regard to this matter right here, that so far as this controversy existing between the stock yards and the railroad is concerned, we do not

"care to mix in it at all as shippers. We have nothing to do with it. We want that distinctly understood. We feel that that is just one trying to pass the buck to the other, as far as that is concerned. The only thing we are interested in is that we feel that this rate when it was made was made to absorb the unloading charge, if any; the rate was made high enough to take car of that unloading charge, if there was any.

Q. (By Comm. Aitchison) Just which rate are you talking about that you said was made then? Do you mean the general rate on live stock? A. Yes.

Q. And you are not talking about any particular advance?

A. No, no advance, but the general rate on live stock. The Commission has passed on all of our rates time and again and especially in 1910, the Corn Belt case, that was gone over by the entire Commission, and that is our position in the matter, that we feel that that rate was high enough to absorb the unloading charge, if there was any, and we feel that it is unjust to the shipper to now saddle that unloading charge off onto him. That is our position in the matter. So far as the controversy between the stock yards people and the railroads is concerned, we are absolutely neutral. It is a question for them to fight out among themselves.

Q. (By Mr. Hillyer) In other words, your position on that is that in this process of passing the buck, as you call it, the farmer, who is the innocent bystander, gets left?

A. Yes, we were the fellows that the buck was passed to.

Q. Now, speaking about this question that Mr. Norton asked you about—I was asking you on direct examination about the practice of loading in the country and the practice of unloading in the city.

"A. Yes.

Q. He took you up on the question of legal liability for loading in the country and unloading in the city, and as I understood your direct testimony, you did not refer to the question of whose duty it was at all; you were merely testifying about the practice?

A. I was merely testifying about the practice; that was it.

Q. And what was actually done?

A. Yes. I did not know whose duty it was.

Q. For all you know, it is still the duty, under the decisions of the Supreme court, for them to load your live stock in the country?

A. Why, I don't know anything about that feature of it, when it comes to the legal part of it. As I said, I am a farmer and stock man. The unloading part of it and the position the cattle men have taken in regard to this stuff delivered at the market, I am familiar with that, because of cases that have come under my own observation, and I know how that goes, but on the question as to whose duty it is to load and unload stuff in the country, I know nothing about it. We simply do it because we won't allow the other fellow to do it, won't take the chance.

Q. That is as far as your testimony goes?

A. Yes. We don't know whether it is the duty of the railroad or not.

Q. (By Mr. Norton) I did not intend to get the witness' opinion on any law. I wanted the facts as he related them. A question I forgot to ask you is that in the handling of the live stock—I assume you are a heavy handler?

A. Not a big handler, no.

Q. How much moves back and forth, how much of a

"movement do you have back and forth from the ranges to your feeding places?

A. None at all. I always buy at the markets.

Q. Then the stock you ship to Chicago you buy—

A. I buy at the markets, unless I buy it in the country.

Q. What do you mean by buying at the market?

A. At the Missouri River markets, Sioux City, Omaha or Kansas City.

Q. I was under the impression that you were shipping from Ida Grove, Iowa, large quantities of cattle.

A. No, sir.

Q. Is there much cattle shipped from Ida Grove, or that region to Chicago?

A. Well, if you lived there a while you would think so. It is one of the greatest live stock sections in the world. We are a part of the country that is feeding the world.

Q. Now, the breeders and the growers that bring the cattle up for the markets, do they within your knowledge handle any important number back and forth between their pastures at distant points and their feeding places?

A. Over the railroads, no, sir, not in our state. We are a corn state. Bear in mind, Mr. Norton, that Iowa is a corn state. We do not raise cattle and ship them out to the ranges at all. We buy practically all of our feeders.

Q. Right at home?

A. Yes.

Q. Mr. Cowan called your attention to what he thought to be the fact, that there has been no advance in these loading and unloading charges at other places. Do you ship any stock to St. Louis?

A. No, sir. I know nothing about St. Louis.

"Q. Then the decision in the Dimmitt-Caudle case has not affected you then?" A. No, sir.

Mr. Norton: That is all.

Q. (By Exam. Gerry) Do you know any instance since June 21, 1917, when the increased loading and unloading charges became effective, that any carloads of live stock were diverted from the Chicago market because of those increased charges?

A. No, sir; I do not know of any such instance. There might be, but it never came to my knowledge.

Q. (By Com'r Aitchison) Have you made any inquiries as to that? A. No, sir; I have not.

Q. (By Mr. Helm) You spoke about live stock being considered perishable freight? A. Yes, sir.

Q. To handle? A. Yes, sir.

Q. Now, has it been your experience in Iowa in recent years that there was considerable irregularity as to the time when you could count upon trains being due at your point for the handling of live stock?

A. Yes, that is true, until the last sixty days, it has been quite irregular.

Q. Was that condition such that you could not with safety take your cattle to the stock pens until you had information as to when the train would be there?

A. Yes, sir; it was to such an extent that we would not dare to. Some of the fellows took chances and took their stock in and had to take them back home again.

Q. That is another reason, is it not, why you could not depend upon the railroads to handle your stock at the point of origin?

A. Absolutely so, yes, sir.

Q. You know of instances, do you, in which they have had to take their cattle back home?

A. It came right under my own observation. I helped

"to make out a claim for a young fellow who took his stock in and had to take it back home.

Q. (By Mr. Norton) Mr. Sykes, you spoke of the disinterestedness between the carriers and the stock yards people in this controversy on your part. I would like to ask you as a disinterested witness what you would say of the proposition that in view of the revenue which the stock yards company gets from you and other shippers it should in fairness take out your cattle and select them and put them in the yards as a part of its work, without additional charge?

A. Well, sir, now, Mr. Norton, I am not in a position to—I am no authority on that, because I don't know anything about the equipment and the expense attached to the operation of the stock yards a bit more than I do of the operation of the Northwestern Railroad. I would not be a competent witness to testify on that.

Mr. Norton: I do not know, Mr. Chairman, whether we have enough in the record about the charges over there, or whether you consider them material. There is a bill in, I think, showing eleven items of charges, which appear on the face of it, in these yards.

Com'r Aitchison: That appears in the record, doesn't it?

Mr. Norton: Yes, I think so.

Mr. Hillyer: That bill shows everything but the freight charges.

The Witness: That is all, is it?

Mr. Hillyer: Yes. (Witness excused.)

Com'r Aitchison: Have you any other witnesses at this time?

Mr. Cowan: If the Commissioner please, in connection with Mr. Sykes' testimony, which drew out the fact in regard to the stock yards company saying it does not want the 25 cents—

"Mr. Helm: From the shipper.

Mr. Cowan: From the shipper? Mr. Helm: Yes.

Mr. Cowan: And the railroads have no tariff against the shipper of 25 cents; hence they have got no claim, I suppose to the 25 cents, but we have to pay the 25 cents; because it is put on the railroad bill. Now, there are certain things I intended to ask of Mr. Henkle, which will probably be unnecessary, because I believe it is well known between the counsel, and it has been stipulated, if my memory serves me right, in the record here before, that there was no tariff other than the absorption circulars and the proposed cancellation of the absorption circulars, which were suspended. There were no tariffs of the stock yards company, except the 25 cents—I am speaking of the unloading—probably a supplement to it, and then a proposed cancellation which was suspended and left in that attitude at the previous trial. At that trial—I beg to call your Honor's attention to what I claim to have been in the record—these tariffs, all of the tariffs and the findings of the Interstate Commerce Commission with respect to the cases spoken of—those things could be considered and used in argument and cited in brief, to avoid the use of the time that would be required to dig out and present those things to your Honor.

The stock yards company then stated they desired to cancel the tariff putting that 25 cents on. The railroad company stated they did not object to what the stock yards company did; they could do whatever they wanted to. There was nobody in the inquiry being passed around the table who objected to the cancellation and the shippers thought they had nothing else to do except to ask the Commission to see to it that it was cancelled. There was no controversy except to ask the stock yards company to cancel its tariff, whatever might be the relation between them, until there was some further change

"in the tariff, so it would not be against the shipper, provided the stock yards company were permitted to cancel that tariff.

Now, I would like to ask here whether there is any change in the position of the stock yards company and the railroads now to what it was then with respect to the particular matter of the cancellation of the stock yards company tariff imposing the 25 cents. If not, I will assume that condition now exists as it did at the close of the hearing.

Mr. Helm: You are asking Mr. Norton that question?

Mr. Winston: I think he is asking me. Mr. Helm: Oh.

Mr. Winston: The stock yards company sought to cancel their tariff on the ground that they were not a common carrier subject to the Act. There is no question that the stock yard company wanted fifty cents. The Commission has held that we are a common carrier, subject to the Act, and until that is changed, why, we will have to file that tariff. That is all there is to it.

Mr. Cowan: Let me ask if that tariff is one that purports to charge it against the shipper?

Mr. Winston: No, that is a tariff that simply says fifty cents for unloading and 75 cents for loading. It is a matter of record with the Commission as to what the tariff does state.

Exam. Gerry: And since the tariff was issued increasing the charges 25 cents in each instance for loading and unloading no change has been made in the tariff of the carriers which reach Chicago, so that the tariffs of the carriers which reach Chicago are in the same position that they were before and they do not now absorb the additional 25 cents?

Mr. Norton: That is correct.

"Exam. Gerry: Otherwise the tariff situation is not changed?

Mr. Norton: That is correct.

Mr. Hillyer: But they continue to put this extra 25 cents in the freight bill as though there were a lawful tariff on file in Washington authorizing them to collect that?

Mr. Norton: No, there is a stamp put on the bill and the money is collected and kept by the stock yards people.

Mr. Winston: They collect all your freight charges?

Mr. Norton: There is a stamp of protest put on all bills, showing we have no tariff for it.

Exam. Gerry: Is it the purpose of the defendants to have a witness to show the tariff situation?

Mr. Norton: If the court wants it, but you stated it yourself, Mr. Examiner. We have not undertaken to change the tariffs as they existed, Mr. Chairman, and Mr. Examiner, because the litigation is in process, the petition for a rehearing was up and so forth and the thing has stood as it stood before. We are absorbing the loading and unloading, but not the advance.

Com'r Aitchison: You say you are stamping your bills under protest. Is that a different form of bill than the one which appears in the record as Coffey Exhibit 2?

Mr. Norton: I put in by Mr. Coffey some exhibit with a rubber stamp. That is it 'unabsorbed loading 25 cents.'

Mr. Winston: Is there any protest on that?

Mr. Norton: That is what it was, that we have no authority to charge that—we are not charging that or paying that. Of course, we have not tariffs to absorb it.

Exam. Gerry: Do the tariffs of the defendants provide that they will absorb all of the charges for loading and unloading or do they specify the amount of the charges?

"Mr. Norton: They specify the old amounts, 25 and 50 cents, 25 for unloading and 50 cents for loading. Now, that is a concurrence, Mr. Examiner, in the stock yard company's tariff and they have refused concurrence in the other tariff making the advances.

Mr. Winston: Now, the present tariff in effect is supplement No. 1 to I. C. C. No. 6, Union Stock Yard & Transit Company, and supplement No. 1 to stock yard tariff No. 3—I beg your pardon, it is Union Stock Yard & Transit Company tariff No. 3, I. C. C. No. 6, not supplement No. 3. The charge made by this company for the services as carrier's agent of loading and unloading live stock at the Union Stock Yards of Chicago is as follows: For loading 75 cents; for unloading 50 cents.

Mr. Cowan: The reason I am calling attention to that is that there is no lawful rate existing anywhere charging the shipper a nickel, but they are getting that 25 cents just the same, somebody. Neither tariff makes a charge against the shipper.

Mr. Hillyer: I think we would like to put those in as an exhibit, showing the 25 cents added right into the rate, $52.40."

EXCERPTS FROM TESTIMONY OF O. T. HENKLE, GENERAL MANAGER UNION STOCK YARDS & TRANSIT COMPANY, ORIGINAL EXHIBIT NO. 7, PAGES 1207 TO 1212, BOTH INCLUSIVE.

"Q. (By Mr. Winston) What is meant, Mr. Henkle, by yarding?

A. Yarding is the handling of the live stock through and about the yards after delivery is taken from the railroads, or before delivery is made to the railroads for shipping out.

Q. In other words, driving the cattle from the delivery chutes to the commission merchant's pens? A. Yes, sir.

Q. Or driving them from the pens to the chutes for loading out.

A. And taking them from the scales and caring for them.

Q. It does not include taking care of the feeding or watering of the cattle? A. No, sir.

Q. It does not include delivery from the pens to any purchasers of the cattle?

Mr. Helm: Are you getting a definition of yarding now? Mr. Winston: Sir?

The Witness: What is the last question.

Q. (By Mr. Winston) Yarding, under your definition, includes handling the cattle from the time they are delivered at the mouth of the chute pen. A. Yes.

Q. To the commission merchants pen in which they are sold.

"A. If we take them to the commission pens, yes sir.

Q. Or take them over the scales. A. Take them from the scales.

Q. From the scales to the pen of the purchaser?

A. Yes, sir, and take them from that pen to the point where they are to be shipped.

Q. And take them from that pen to the chutes for loading out. A. Yes, sir.

Q. And that is all that yarding means, is that right? A. Yes, sir.

Q. (By Mr. Helm) Is that all that you charge to yarding? Don't you charge anything for the rent or the use of the pen? A. No, sir.

Q. To anybody? A. No, sir.

Q. You just charge on the basis of the service in the labor that you perform.

A. Well, the yarding—there is a charge that we call a yardage charge, and this is the only labor that is connected with the yarding charge. Q. What?

A. This is the only labor that is connected with the yardage charge.

Mr. Winston: There are, of course, the facilities there also.

Mr. Helm: That is what I mean.

The Witness: The term "yardage" covers this service that we have defined and the use of the facilities.

Mr. Helm: That is what I was getting at. The Witness: Yes.

Q. (By Com'r Aitchison) The service that you have been describing as yarding, is that which takes 25 per cent of the time of the 29 laborers during the month of April in the shipping division.

A. Yes, they do very little yarding.

Q. They do very little yarding? A. Yes.

Q. But how does it happen that although you assign

one-fourth of the $2400 payroll to yarding you do not let any of the superintendents follow the payroll of the laborers whom they superintend, but you charge it all to loading?

A. Because the superintendent, assistant superintendent, assistant yard masters and yard masters never leave the shipping divisions. The men go at times to assist in the yarding.

Q. Then the superintendence does not extend to the yarding at all.

A. Not with those men. They would be at the scales, and under perhaps the deliverers or the counters off at the scale.

Q. And they are absolutely un-superintended?

A. No, sir.

Q. Then where is the charge of the superiors of these 29 laborers which go to yarding?

A. When they go to the scales they come under the other superintendents which are handling the yarding and weighing. Their own superintendents stay at the shipping division.

Mr. Helm: And who is in charge of these policemen?

Mr. Winston: Mr. Hunter.

Com'r Aitchison: Have you any further questions of Mr. Henkle?

Mr. Helm: Well, let him remain there. It seems a kind of a combination.

Mr. Hillyer: I have one question of Mr. Henkle.

Q. (By Mr. Hillyer) Mr. Henkle, you put in an exhibit the other day. This is the detail of that exhibit, is it not, tha ou put in the other day?

A. That is all. This is supposed to be the detail making up the figures presented yesterday.

Q. How did you describe the exhibit you put in yesterday? I may have gotten the wrong impression, but

"I would like to get how you described the exhibit you put in yesterday.

Mr. Helm: That was the direct labor cost.

A. It was headed 'Statement showing labor costs and labor cost per car for unloading and loading live stock.'

Q. (By Mr. Hillyer) We are not to understand, then, that you include in that labor cost the items chargeable to shippers for unloading live stock?

Mr. Winston: This has nothing to do with where it should be charged. This is simply the labor cost to us for performing the entire service.

The Witness: Yes, sir. I made no statement as to whom it was to be charged to, or who was responsible for it.

Q. (By Mr. Helm) Well, you publish a tariff, don't you, in which you say you make a collection as agents for the carriers for all of this business? A. Yes, sir.

Q. Is that your understanding, that this is a charge that is due you from the carriers for the service that you perform for the carriers?

A. The carriers for more than half a century paid us for it, so we concluded we were doing it for them.

Q. They paid you for it under a contract you had with them?

A. I don't know how it was originally established.

Com'r Aitchison: All that has been gone over before.

Mr. Helm: I do not know. Perhaps it has.

The Witness: It was very thoroughly developed.

Q. (By Mr. Helm) But at any rate, there was no general agreement as to changing the charges to the carriers, was there? Was there any agreement as to an increase? Has that been a subject of agreement between you and the carriers? A. No, sir.

Mr. Helm: That is all I have.

"Q. (By Mr. Hillyer) There was some agreement between you as to putting it on the freight bills, wasn't there?

A. We collect what they put on the freight bills."

EXCERPTS FROM THE TESTIMONY OF H. W. BEYERS, ASSISTANT FREIGHT TRAFFIC MANAGER, CHICAGO & NORTH WESTERN RAILROAD, ORIGINAL EXHIBIT NO. 7, PAGES 1251 TO 1253, BOTH INCLUSIVE.

"The Lowrey tariff is an agency issue, which came into existence in 1911, and was created under the direction of the Interstate Commerce Commission in so far as the—I say in so far—one reason being for an agency tariff that the Commission thought that the carriers should simplify their tariffs indicating to the shippers what rate bases would apply to or from facilities beyond the terminals of the road haul carriers.

Under the Lowrey tariff the Chicago Junction Railway is a participating carrier. The Chicago and North Western Railroad, like other road haul carriers, is an issuing carrier. The Lowrey tariff indicates the Union Stock Yards as a station on the Chicago Junction Railroad, at which are located industries, team tracks and freight houses.

In order to determine a rate on live stock to the Union Stock Yards, Chicago, there is indicated the application of rate basis No. 6. Rate Basis No. 6 advertises the application on inbound movements of the Chicago rate plus a terminal charge of $2 per car to or from industries, chutes and sidings. It also indicates that the railroads as shown will pay the Union Stock Yard & Transit Company's charges as follows: loading charges, 50 cents per car; unloading charges, 25 cents per car.

"Under this tariff the shipper has before him everything that entered into the transaction of taking a car to the chutes or sidings at the Union Stock Yards, and indicates to the shipper that his charge will be the flat Chicago rate plus $2 per car terminal charge, and that the carriers as indicated will pay the charges of the Union Stock Yard & Transit Company for loading or unloading, which was the situation up to the time that the Union Stock Yard & Transit Company changed their tariff basis by advancing it 25 cents per car, both in the matter of loading and unloading charges.

The construction of this Lowrey tariff, in so far as the rate to or from the chutes and sidings at the Union Stock Yards is concerned, was in keeping with the Chicago Junction Railway Company's tariff, of which their 22-A, I. C. C. 120, as of January 1, 1918, is typical.

In 1911, when the Lowrey tariffs were first made, the Chicago Junction Railroad was at issue with the Interstate Commerce Commission as to whether or not it was required to file its tariffs with the Commission. The question had not been decided, so we were told by the Commission that we must show specifically in our tariff what we did with respect to payments to the Chicago Junction Railway, or the Union Stock Yard and Transit Company in the matter of unloading as well as the transportation service, which the Chicago Junction Railway covered in a tariff, but that tariff not on file officially with the Commission."

EXCERPTS FROM THE TESTIMONY OF D. C. MOSIER, CHAIRMAN OF THE TRANSPORTATION COMMITTEE OF THE CHICAGO LIVE STOCK EXCHANGE, ORIGINAL EXHIBIT No. 8, PAGES 25 TO 96, BOTH INCLUSIVE.

"Q. (By Mr. Hillyer) Mr. Mosier, will you state your name, please?

A. D. C. Mosier; commission merchant; U. S. Yards, Chicago.

Q. How long have you been in the commission business?

A. I have been connected with the commission business twenty-two years.

Q. Has all that time been at the Union Stock Yards? A. Yes, sir.

Q. It would be reasonable to assume then that you are familiar with the transactions which occur at the stock yards as between the shippers and the commission men and as between the commission men and the defendants in this case? A. It would.

Mr. Woodward: Mr. Examiner, before we pass that matter in the record, my original objection, I want it understood, covers the intrastate phase of the situation; that is, the formal record would be evidence only as to interstate rate situations, and we should object, that is the Director General objects to its being considered on any intrastate phase.

Exam. Hosmer: The record will show the objection.

"Mr. Hillyer: The Director General would not make the technical point, would he, that there was any difference between a carload of live stock unloaded at the Chicago stock yards, just because it happened to come from a point on the east bank of the Mississippi River, or a point on the west bank of the Mississippi River?

Mr. Woodward: The Director General takes the position, Mr. Hillyer, that this is a lawsuit, and that that particular issue or that general issue has not been covered as to that phase of it.

Mr. Hillyer: All right. I will cover that.

What is your connection with the Exchange itself at the present time, what official position do you hold?

The Witness: I am at the present time vice president of the Chicago Live Stock Exchange and chairman of the transportation committee.

Q. (By Mr. Hillyer) Outline briefly the duties of the transportation committee of the Chicago Live Stock Exchange, of which you are chairman, and of which you have personal and direct daily cognizance.

A. The duty of that committee of that department is the filing of claims for damages and undercharges. That is to say, these claims and charges are filed for the shipper and farmer and the producer of live stock. It is also the duty of that committee to look after schedules and to see that the railroads are efficient in bringing this live stock into the yards in the best shape and in the shortest time possible, so that the shipper and farmer does not suffer a loss on account of delay of trains, and on account of incorrect or bad schedules.

Q. In other words, your activities cover all departments of the business, including traffic, the tariff, the rate situations, and the physical operation of delivering these trainloads of live stock at the yards? A. They do, yes, sir.

Q. You have been on this committee for some time,

"have you not? You have worked yourself up on it from a member to chairman of the committee? A. Yes, sir.

Q. Does this committee operate through an organization? If so, describe briefly that organization of salaried employees.

A. We have an organization under the supervision of this committee known as the transportation department of the Live Stock Exchange. It is the duty of these members to carry out the wishes and orders of the officials of the Exchange and of the transportation committee.

Q. Following your general line of testimony, please state the interests that the members of The Chicago Live Stock Exchange have in this proceeding. A. You mean this case?

Q. Yes. I will offer the witness a copy of a memorandum to refresh his memory with in order that we shall not duplicate any testimony and shall get through with it as rapidly as possible.

A. You say interest in the case. Which case do you mean, that is what I want to get at?

Q. In the case we are trying here this morning.

A. Our interest in this case is the interest of the shipper. These proceedings were brought by The Chicago Live Stock Exchange absolutely in the interest of the farmer and producer.

Mr. Andrews: Did you prepare that memorandum, Mr. Mosier?

The Witness: I helped to prepare that memorandum, yes, sir; that is, the answers.

Q. (By Mr. Andrews) All of the questions and answers?

A. Not all of them, no. I don't care for that memorandum. I can answer without it.

Mr. Andrews: I don't know what is in there, of course.

"Mr. Hillyer: We will get it in the record in proper form, and then you will know.

Q. (By Mr. Hillyer) How is live stock brought to the Chicago market with respect to freight rates?

A. Do you mean the settlement of the freight?

Q. No; how is it consigned, by whom and to whom?

A. It is consigned from the shipper at the point of origin to the commission man.

Mr. Woodward: Mr. Examiner, if this is testimony as to the practice and if it is offered in support of specific claims, the Director General objects to its admission as immaterial, in so far as it is offered for that purpose.

Mr. Hillyer: For what purpose did you say?

Mr. Woodward: Just read my statement, Mr. Satterlee.

Exam. Hosmer: Yes, just read what Mr. Woodward said there.

(Record read as above recorded.)

Mr. Hillyer: It is offered for that purpose.

Exam. Hosmer: The objection will be overruled at this time. The record will show the objection.

Mr. Woodward: May I have an exception, Mr. Examiner?

Exam. Hosmer: Yes, the record will note an exception.

Q. (By Mr. Hillyer) When the live stock is received at the Union Stock Yards, who attends to the payment of the charges thereon?

A. When this stock is received at the yards by the commission man, they pay all the charges, the yardage charges, the freight terminal charges, and remit to the shipper the net proceeds of the consignment.

Q. Are the commission men, that is like yourself, members of the Exchange, parties to this case Docket No. 12614? A. They are, each member.

Q. What are some of the duties and customs followed

"out in the relations between the farmers and the commission men with respect to the responsibility of the commission man to the farmer, and his fiduciary relationship, you might call it, to the farmer?

A. The relationship between the farmer, producer or shipper, whichever you may call him, is very close. We transact his entire business; we not only sell his live stock and take a commission, but we are his agent in every respect, in the payment of his freight, in the filing of claims both for undercharges and for damages in transit, and it is our duty to look after his interests in every way.

Q. Do you advise him as to market conditions?

A. We advise him as to market conditions daily and weekly, and the majority of the shippers and producers look upon the commission man as an advisor.

Q. Does this relationship extend to supplying the farmer with stock for fattening, and so on? Does he depend upon you to buy that for him on the market?

A. A great deal of stock is bought by the commission man on orders for the feeder of live stock, the feeder quite often not coming to the market, and depending upon the commission man to use his judgment as to price and quality and to ship him the live stock.

Q. Then as to all of this relationship, in connection with the marketing and purchase of live stock, the farmer is absent from the market and relies absolutely upon the good faith of the commission man to protect his interests?

A. In, I would say, the majority—

Mr. Woodward: Mr. Examiner, without being captious, I would like to object to that line of leading questions on this point.

Mr. Hillyer: I was simply following out the well established rule of evidence that leading questions hasten the

"testimony as long as there is no objection to them. In as much as you object to it, I will—

Mr. Woodward: Well, confine it please, as much as possible.

The Witness: I would say the majority of live stock sent to the market is not accompanied by the owner. In a great many cases, however, the shipments are accompanied by the owner. Oftentimes when they come to the market the salesman says, 'We are bid so much on your live stock. What do you think?' And they say, 'Use your own judgment. You are selling this live stock and buying for us, and use your own judgment. We have implicit confidence in your ability along that line.'

Q. (By Mr. Hillyer) How are the financial relations between the commission man and the farmer carried in due course of business there, are they carried in open accounts? That is, do you carry a running account with each farmer?

A. There are some accounts kept that way. In most cases, or a good many cases, the shipper is remitted for the net proceeds and that closes the account. But there is no shipper to this market but who can draw on his commission man for a certain amount of money if they know he is reliable. He can have an account with them, and they often do. They often come to the city and call up the commission man in buying in the downtown stores and establish their credit in the downtown store by referring to their commission man. Or they may say, 'My money has gone home. Send us out a check for so much money and I will remit it to you when I get home.'

Q. Then the farmers look to you as sort of a personal banker?

A. In many cases, yes.

Q. You have outlined somewhat in detail here this relationship between the commission man and the farmer or shipper to this market. Is this relationship generally

"recognized by everybody, including these defendants? A. It is.

Mr. Woodward: Will you read that question, please?

Exam. Hosmer: Read the question and answer, Mr. Reporter.

(Record read as above recorded.)

Mr. Woodward: I object to the latter part of it. The Witness: Shall I answer that further?

Mr. Hillyer: You might explain your answer a little more fully.

Mr. Woodward: The Director General, I might point out, is a party defendant.

Exam. Hosmer: I think it is perhaps objectionable on the ground that it is rather a conclusion as to how they recognized it.

Mr. Hillyer: I think so too, Mr. Examiner. I think I will have the witness explain what he means by that.

Exam. Hosmer: In what way do they recognize it?

The Witness: The defendants have recognized this in the settlement of claims. I have had a great deal of experience with them, and I have found out that a good many of the claim agents and a great many of the railroad people themselves will take the commission man's word. In fact, I have been called upon to decide cases which came up between shippers and claim agents, and they have recognized us and taken us as authority on these claims.

Exam. Hosmer: Were those matters of loss and damage? The Witness: Yes, sir.

Mr. Woodward: Mr. Examiner, I do not like to be too captious, but it seems to me we ought to have here a statement as to the purpose of this testimony.

Mr. Hillyer: I am perfectly willing to give you a statement.

Mr. Woodward: If there is a claim that certain individuals are entitled to reparation, the statement is direct

"that those individuals are not The Chicago Live Stock Exchange, but certain lists of shippers of record.

Mr. Hillyer: We will develop that a little later. We are leading up to that now.

Mr. Woodward: It seems to me one of the first things to show is the authority to represent those shippers.

Mr. Hillyer: I will say this, that I am not so foolish as to go into this case and ask a lot of wild questions getting nowhere. I have a definite purpose in view here in trying this case, and I think that purpose is for the interest of all parties concerned, including the Commission, the railroads, and Mr. Woodward. Now I am following that line out and doing the best I can. It may not be clear to the other gentlemen who have not studied this case as thoroughly and carefully as I have what I am doing, but I think all of these questions are right to the point, and I will get to it very shortly.

Mr. Andrews: Tell us the point, that is the quickest way to settle it.

Mr. Hillyer: If I told you the point you would lose interest. You need a little something to keep you sitting there.

Mr. Woodward: Mr. Examiner, it seems to me the authority is the first thing to put in the record. These people are claimants and the way to show authority is by the ordinary methods. There are a number of thousands of shippers claiming reparation. Now what the Director General would like to know is where is the authority on the part of these parties—

Exam. Hosmer: On the part of the commission men?

Mr. Woodward: Yes, on the part of these commission men to claim in the interests of this large number of shippers.

Mr. Hillyer: That will develop very shortly if you will just let me go ahead.

Exam. Hosmer: Go ahead. I think we can get at this

"just about as quick by the form of questions. If the testimony is not relavant and does not prove that the complainants here are entitled to reparation, that will be a matter for argument which can be decided later.

Q. (By Mr. Hillyer) Will you state the position of The Chicago Live Stock Exchange and its individual members towards the shippers and the amount of reparation which is due on the shipments involved in this case?

A. The position of The Chicago Live Stock Exchange and its individual members representing their customers, who are the shippers and producers of live stock, is that they are entitled—

Mr. Woodward: Now, Mr. Examiner, I think before this witness makes any such statement as that we are first entitled to know his authority to speak for the individual members of The Chicago Live Stock Exchange. He may be authorized to speak for the corporate entity, but he is now speaking for the individuals, which of course obviously he cannot do.

Mr. Hillyer: I will ask the witness to state whether he has full authority to speak for the Live Stock Exchange individually and as an entity.

Exam. Hosmer: He has not entered an appearance here.

Mr. Woodward: He has entered an appearance for The Chicago Live Stock Exchange, Mr. Examiner, and I have no objection to that, but when he speaks for individual members, that is a pretty wide scope.

Exam. Hosmer: Yes, he has entered an appearance for The Chicago Live Stock Exchange and he is a member and officer of it. I think he is competent.

The Witness: Where did I get with that?

(Answer read as above recorded.)

The Witness (continuing): Entitled to this reparation, and that is why the proceedings were started, and when it is collected, if it is allowed, the shipper and pro-

"ducer will get every cent. Not one dime, not one nickel, will be taken will be taken by The Chicago Live Stock Exchange or any of its members for the collection of this amount.

Q. (By Mr. Hillyer) Assuming that the money is paid over to the members of The Chicago Live Stock Exchange as factors and agents of the farmers, would the settlement with the farmers and shippers be exactly in accordance with your other transactions in the regular course of business day by day?

A. It would. If this money was remitted to the commission man as agent for the shipper, he would remit the net amount to the shipper or customer. By net amount there I mean the full reparation. There will be no charges deducted for the collection.

Q. Is there any uncertainty as to the amount of reparation due each shipper or consignor under the finding of the Commission?

A. Our books and account sales will show exactly. It is kept as a separate item and shown on the account sales, so much for the unloading charge, so much for the terminal charge, and so much for freight.

Q. That is shown separately for every item paid in this loading and unloading charge found to be unlawful?

A. It is.

Q. And it is from those records that these claims have been compiled and submitted to the Commission?

A. Those are the records from which the claims have been compiled, yes, sir.

Q. Is the testimony that you have given and are the facts involved in this reparation claim, representative of the uniform practice and custom among all of the members at the Union Stock Yards?

A. Yes. The members and practices are uniform there and are governed by rules and regulations of The Chicago Live Stock Exchange.

"Q. And do they apply uniformly in all matters of this kind?

A. Yes, sir, that is correct.

Q. Are these rules, customs and practices a matter of common knowledge around the exchange and among the people having dealings with the Exchange, including these railroads?

A. The rules and regulations are published, printed, and are common knowledge among the members of the Exchange, and any time a rule is changed it must be posted ten days and voted on before such a rule can be changed or a new rule enacted.

Q. Are these rules and regulations and customs strictly enforced in all instances? A. They are.

Q. Will you state how the reparation claims involving this loading and unloading charge, which have been filed with the Commission, and a copy of which has been served upon the railroads, were compiled in this case?

A. They were taken from the books and records of the commission houses, members of the Exchange, the actual shipments showing the actual point of origin, the car number, and a complete claim filed for each shipment.

Mr. Andrews: Do you mean by that that you have served copies of claim statements on the carriers?

Mr. Hillyer: Yes, on every road, your road as well. You have been served with a copy of a claim involving every 25 cent charge which you collected during the period when this charge was unlawful. I don't say it was served on you, Mr. Andrews, but it was served on an officer of the Santa Fe Railway.

Mr. Andrews: To whom were the claims statements sent?

Mr. Hillyer: To whom were they sent, these claims, Mr. Mosier? Did you personally attend to that, or did Mr. Park attend to that?

"The Witness: Mr. Park attended to that matter and I would rather he would answer that question.

Mr. Andrews: Who is Mr. Park? The Witness: He is traffic manager of The Chicago Live Stock Exchange.

Q. (By Mr. Hillyer) Did the Exchange through its attorney secure from the Commission the data necessary before attempting this task of compiling the claims? A. Yes, sir.

Q. Mr. Mosier, is it the sworn statement and testimony of you as a member of the Exchange, and for and on behalf of the other members of the Exchange, that the sums set out in the several claims are the correct amounts of the damage that has been suffered by reason of the unreasonable and unlawful loading and unloading charges condemned by the Commission?

Mr. Woodward: I object to that.

Exam. Hosmer: What are your grounds? Mr. Woodward: Several.

Exam. Hosmer: All right, state your grounds.

Mr. Woodward: The testimony of this witness is that the individuals entitled to the reparation are not members, some of them, at least, of The Chicago Live Stock Exchange.

Mr. Hillyer: No, you misunderstood me on that.

Mr. Woodward: Obviously all these are not members.

Mr. Hillyer: I know, but you have not studied my complaint very carefully. I have tried to tell you the purpose of the complaint, as I understand it, before the Commission is to definitely advise the parties just what the claims and contentions of the complainants amount to and what they are. Now I have tried my very best to set that out for you in the complaint, and we stand on the complaint.

Mr. Woodward: But that is not evidence, Mr. Hillyer. The complaint is an allegation and you are making the record here.

"Mr. Hillyer: Yes, but our position is stated in the complaint.

Mr. Woodward: This witness has stated that The Chicago Live Stock Exchange is not the claimant in their own right. That someone else is specifically entitled to the reparation.

Mr. Hillyer: But we have not completed that line of testimony.

Mr. Woodward: In the first place, the witness cannot answer as to the matter of damage, because that is a conclusion of law as to whether or not they were damaged.

Mr. Hillyer: Let us settle it as we go along. My question undertook to take care of that by referring to the damage found by the Commission.

Mr. Woodward: That is still a conclusion of law.

Mr. Hillyer: He is not saying that they were damaged, but he is saying if they were damaged as found in the decision of the Commission, that these statements contain the correct amount.

Mr. Woodward: I still object on the ground that it is a conclusion of law by the witness; and on the further ground that he is testifying as to matters which he has not shown are within his knowledge, by his previous testimony.

Exam. Hosmer: Now read the question.

Mr. Hillyer: Well, we think he has.

Mr. Woodward: We don't know how the freight charges were paid. They may have been paid at point of origin; they may have been paid by some third party, so far as the record shows. (Question read as above recorded.)

A. Yes, sir.

Mr. Woodward: I do not think that is a proper question, Mr. Examiner.

Exam. Hosmer: If the Commission thinks it is in-

"competent, they will disregard it. I will permit the question and answer to stand in the present form.

Mr. Woodward: I simply want to point out in passing that the witness testified that these claims were prepared from records of the complainant, that is, The Chicago Live Stock Exchange.

Mr. Hillyer: Now, did you overlook the fact that he testified a few moments back that he paid this money himself?

Mr. Stillwell: He said the commission merchants.

Mr. Hillyer: Well, he covered that.

Mr. Woodward: I was reserving that for cross-examination, as to whether he referred to the record of the Chicago Live Stock Exchange or not.

The Witness: I changed that in my answer.

Mr. Woodward: Then you referred to the records of the commission merchants? The Witness: Yes.

Mr. Woodward: So all these claims are simply transcripts of the records of certain commission merchants. Obviously it is no evidence of damage. That is only evidence of certain facts set forth. Now they speak for themselves. Those records if available might be introduced in evidence and certain deductions made from them, but this witness ought not to testify to conclusions and certainly ought not to try to draw inferences in this way.

Exam. Hosmer: Tentatively, I think the evidence may be admitted. If it is subject to the infirmities you speak of your rights are amply protected by making your objection at this time. Under our procedure I do not think it is necessary to rule further.

Mr. Woodward: I just wanted to enter the objection and take an exception.

Exam. Hosmer: Yes. That will show on the record.

"Mr. Hillyer: You refer to these statements as having been taken from the records of the commission men. What do the records of the commission men show?

Mr. Woodward: I object to that question; the best evidence of that is the records themselves.

Mr. Hillyer: All right, go ahead and answer. Shall he answer, Mr. Examiner? Exam. Hosmer: Yes.

Mr. Woodward: May I have an exception on the ground that it is hearsay evidence?

Mr. Hillyer: No, he is testifying about money that he pays out of his own pocket.

Exam. Hosmer: No, your question was broader than that.

Mr. Hillyer: All right, what do these records show? We will get to it.

The Witness: These records show the sale of the live stock, the weight of the live stock, the price they brought; they show the freight charges, the feed charges, feed charges in transit, if any, loading and unloading charge when that existed; terminal charge and any other incidental charges which may be incurred in the shipment of this live stock. This amount is paid by the commission man to the carrier or his agent, deducting his own commission, and remitting to the shipper or farmer the net proceeds of his shipment of live stock.

Mr. Stillwell: Just a moment. I object to that conclusion, paid to the railroad or its agent. I object to the words, "or its agent." There is no evidence here that the Pennsylvania Railroad ever appointed the Union Stock Yards Company as its agent and we object to it.

Exam. Hosmer: The record will show the objection.

Mr. Hillyer: Mr. Stillwell, are you familiar with the way you rendered these bills? If not, we will go into that.

"The Witness: Maybe they don't know how their statements are rendered on that stock.

Q. (By Mr. Hillyer) Mr. Mosier, supposing you received a shipment from Mr. Stillwell's line, the Pennsylvania Railroad, and you were rendered a bill for both loading and unloading charges, would that be a bill of the Pennsylvania Railroad?

Mr. Woodward: Mr. Examiner, when the attorney refers to "you," does he mean as a commission merchant?

Mr. Hillyer: Yes.

The Witness: That would be a bill from the railroad company, because it would come on that stub. I don't know whether you understand just how these come on stubs.

Q. (By Mr. Hillyer) Yes, I understand that.

A. I will say for their benefit, maybe they don't know, that they supply us with minimum weights and we insert the hoof weights less the fill allowance and figure the bill for the railroad company and then pay it.

Mr. Andrews: When you speak of the railroad company you mean the Stock Yards company furnishes you with this bill?

Mr. Hillyer: No, we don't mean that at all.

The Witness: No, we take this stub off of your bill.

Mr. Hillyer: We are answering your objection made by Mr. Stillwell, that we paid this money to the Stock Yards company and he assumed that we were assuming the Stock Yards Company was his agent. The answer of the witness is that we paid it on a bill rendered by the Pennsylvania Railroad Company. There cannot be any question about that.

Q. (By Mr. Hillyer) In connection with the statement just made by Mr. Meyers that he had not received the claims, we find here a letter signed D. L. Meyers

"dated April 4, 1921, his file 178-1710, acknowledging receipt thereof.

Mr. Meyers: That is in docket No. 9977.

Mr. Hillyer: No, that covers these shipments as well.

Mr. Meyers: The file number you give is in docket No. 9977.

Mr. Hillyer: Well, we will at this time on the record in this case say that it covers also all of the shipments, including those in this case.

Mr. Woodward: Of course, Mr. Examiner, it is immaterial whether or not it was received or sent.

At this point, Mr. Examiner, I would like to enter the appearance for the Director General of Mr. Charles D. Mahaffie.

Mr. Hillyer: If I can reserve the right to recall this witness in case I need to for further direct testimony, I will turn him over for cross-examination now to save a little time.

Exam. Hosmer: I think that is satisfactory.

Cross-Examination.

Q. (By Mr. Woodward) Mr. Mosier, as I understand it you are a commission merchant engaged in business in Chicago? A. Yes, sir.

Q. Individually, or what is your firm?

A. Rosenbaum Brothers Company.

Q. As an individual and as a member of the firm of Rosenbaum & Company, do you claim any reparation in this matter?

A. We claim this reparation for our shipper as his agent.

Q. You say 'we.' To whom do you refer by 'we'?

A. To Rosenbaum Brothers.

Q. That is Rosenbaum Brothers and you as a member of that partnership—if it is a partnership?

"A. It is a corporation.

Q. A corporation, claim reparation on behalf of your country shippers of live stock? A. Yes, sir.

Q. What authority have you for that claim?

A. In most cases I think our claim bureau representing the individual commission firms has a power of attorney from the country shipper.

Q. Now, I am speaking of certain country shippers that I presume are among this list attached as an addendum or appendix to your complaint filed February 25, 1921; what shippers among this large number have you an authorization from when this action was brought to claim this reparation on their behalf?

A. I wouldn't want to give the names because that matter was turned over to Mr. Park, manager of our transportation department.

Q. Can you refer to one shipper from whom you had that authorization?

A. I have no personal knowledge of the authorization. It didn't come under my supervision at all.

Q. You are also, as I understand it, vice president of the Chicago Live Stock Exchange? A. Yes, sir.

Q. Are these country shippers, these thousands as shown in appendix A, members of the Chicago Live Stock Exchange? A. They are not.

Q. So far as you know has the Chicago Live Stock Exchange authority or had they authority when this action was brought, and speaking now of the complaint filed February 25, 1921, to make this claim on behalf of the country shippers?

A. To my knowledge they had that authority, yes, sir.

Q. What was the nature of that authority?

A. The nature of that authority is that they are factors and agents of the shippers and not only have we

"authority, but it is our duty to look after the interests of the shipper in any respect where we think they are being defrauded or overcharged.

Q. I am speaking of the Chicago Live Stock Exchange now.

A. That is the duty of the Chicago Live Stock Exchange.

Q. You mean the members of the Exchange?

A. The members of the Exchange, yes.

Q. (By Mr. Woodward) No, I am speaking now of the Exchange itself.

A. Yes, sir, it is also the duty of the Chicago Live Stock Exchange which has the interests of the shipper to protect.

Q. Was there any written authority given by the shipper to the Chicago Live Stock Exchange to make this claim in the interests of the certain shippers shown in appendix A?

A. Before the complaint was filed? Q. Yes.

A. That part of it I would rather leave to Mr. Park.

Q. But I understand there was no written authority.

A. No written authority. Q. Nor was there a verbal contract?

A. That part of the complaint I had nothing to do with, other than to refer it to the parties that filed the complaint.

Q. Then you don't know? A. No.

Q. Was there any authority given by the country shippers to the Chicago Live Stock Exchange subsequent to the filing of the complaint on February 25, 1921, to claim on behalf of these particular individual shippers?

A. That I don't know either.

Q. And your answer is the same as an individual as it was as a member of this corporation?

A. Yes, that part of it I am not familiar with.

Q. So that your whole testimony was as to the general practice of the Chicago Live Stock Exchange, and as to the practice of the commission merchants and the members of the Chicago Live Stock Exchange?

A. And their relations to the shipper.

Q. Yes, as to their general practice.

A. General practice and the relations between the shippers and the commission men.

Q. You testified and your language was, I believe, that it was the duty of the commission agents to look after their interests in every way. Does that except the bringing of suits for personal injury of these shippers?

A. I would say with the organization we now have, if any of our shippers were injured while accompanying live stock to the Chicago market, it would be our duty to file claim for them if so requested.

Q. If so requested?

A. Yes, by the shipper; and it would be our duty to go to the shipper and say, "Have you settled this, has the railroad company settled with you?" And if he says "No, they will not do anything for me," it would be our duty to look after his interests.

Q. You would not look after his interests and bring suit in that way without his request in that specific instance, would you?

A. We would certainly go to him and ask him if he had ever received settlement, and if he had not we would go to the front for him.

Q. That is if he had made no approach to you and you simply heard of it collaterally, would you proceed in that way?

A. If this man received an injury and upon inquiry we found he had never been paid for the injury and there was a claim due him, it would certainly be our

"duty and we would investigate the matter and if necessary file claim for that shipper.

Q. But your testimony is as to this particular claim and speaking now both as a member of the Chicago Live Stock Exchange and as a commission merchant, that you had no authority, written or verbal, specially, from the particular shippers that bring this action?

A. I didn't say we didn't have.

Q. But you know of no such authority?

A. I say that is a part of the proceedings I did not take part in and I don't know what the authority was to bring it.

Q. You don't know? A. No, sir.

Q. Do all these commission merchants, members of the Chicago Live Stock Exchange, keep their books in exactly the same manner?

A. I wouldn't say exactly the same form, no. Q. You don't know?

A. Well, the accounts sales rendered are practically on the same lines, exactly, and show the same charges and items in the same way.

Q. But there may be specific variations in the particular practice?

A. There naturally would be some variation.

Q. And these claims were compiled, as I understand it, from your direct testimony, from the records of the various commission merchants? A. Yes, sir.

Q. Did you know that they were compiled from the records of your firm? A. Yes, sir.

Q. As to the records of the other commission merchants, how do you know they were compiled from them?

A. They were requested to compile them in that way.

Q. I see, but you don't know how they were actually compiled?

A. I didn't see them compiled, no, sir.

"Q. You merely know that they were requested to compile them? A. Yes, sir.

Q. Can you point to a name in this appendix A of the complaint, of a concern which ships to you?

A. I suppose I could if I went through the list, undoubtedly.

Mr. Hillyer: There is no question about it, is there?

The Witness: No question whatever.

Q. (By Mr. Woodward) That is you suppose; you don't know?

A. I know I could.

Q. Now, I will ask you to point one out. A. A. E. Lee.

Q. At what point is A. E. Lee located?

A. Centerville, South Dakota, I believe.

Q. Is he a farmer? A. He is a farmer, yes, sir.

Q. When did he ship? A. His last shipment?

Q. Yes. A. His last shipment was Monday of this week.

Q. When did he ship during the period involved in this complaint?

A. I am not able to state.

Q. You don't know that he did? A. I certainly do, yes, sir.

Q. But you don't know when? A. I don't know the exact date.

Q. Did he accompany the shipment or send a man? A. He accompanied it.

Q. Himself? A. Yes, sir.

Q. How was he paid for that shipment?

A. What do you mean by how was he paid? The proceeds were deposited in his bank to his credit.

Q. To his credit? A. Yes.

Q. As to what shipments are you referring? A. To all his shipments.

"Q. That is to say, that is the practice? A. That is the practice, yes, sir.

Q. But you don't know what happened as to any one particular shipment?

A. No, not as to any one particular shipment, no, sir.

Q. Now I will ask you to point to another shipper. A. C. Marshall.

Q. What is first name? A. Carl.

Q. Where is he located?

A. Itava, Illinois.

Q. Is he a farmer? A. He is a farmer, yes, sir.

Q. Did he ship during the period involved in this complaint? A. Yes, sir.

Q. On what dates? A. I don't know on what dates.

Q. You cannot recall the details? A. No, sir.

Q. Or can you recall as to how any particular shipment was paid? A. No, sir.

Q. I will ask you to point to another one, Mr. Mosier. These are shippers who shipped to Rosenbaum Brothers?

A. Yes, sir. Ed Holmes.

Q. Where is he located? A. Itava, Illinois.

Q. Is he a farmer? A. Yes, sir.

Q. When did he ship, during the period involved?

A. I don't know the exact date. Our records will show that.

Q. And you don't recall the details of a specific transaction? A. No, sir.

Q. How many shippers ship to you, roughly, country shippers, so-called, to your concern?

A. I should judge we have a list of around five thousand customers.

A. Five thousand customers that ship live stock consigned to you? A. Yes, sir.

Q. You, of course, don't know definitely whether that

"C. Marshall was the Marshall who shipped to you, when you picked his name out from list of several thousand?

A. I know he had live stock in here during that time.

Q. That is Claude Marshall did? A. Carl Marshall.

Q. Carl Marshall; but you don't know that he is that particular C. Marshall?

A. He might not be the one I pointed out.

Q. Where is your written authority from Carl Marshall to file this complaint? A. Mr. Park has that.

Q. But you havn't got it? A. We haven't got it. Mr. Park transacts that end of the business.

Q. You don't know that there is such authority or was such authority before the complaint was filed?

A. We know there was authority or his name would not be in the list.

Q. But that is the only way you know?

A. That is the only way I know personally, yes, sir.

Q. You deduce it. What is the interest of the Chicago Live Stock Exchange in this litigation?

A. The interest of the Chicago Live Stock Exchange is the interest of the shipper and producer.

Q. You claim, as I understood you to testify, for the shipper and producer this reparation, and that there will be no deduction to the shipper and producer?

A. That is correct.

Q. Does the shipper and producer pay the expenses of this litigation? A. No, sir.

Q. And will not pay it if reparation is awarded? A. No, sir, they will not.

Q. You made a statement, I believe, as to taking care of undercharges? A. Yes, sir.

Q. Do you always pay undercharges on shipments when they are discovered subsequent to the delivery of the shipment?

A. Subsquent? Q. Yes.

"A. Just explain what you mean, will you?

Q. You are familiar with what an undercharge is?

A. Yes, sir.

Q. An amount where the charges are collected less than the tariff amount?

A. I don't think that has anything to do with this case.

Q. But you have testified that you did—

A. We put in claims with undercharges for the shipper.

Q. You do? A. Yes, sir.

Q. Now, how about undercharges? You are speaking of overcharges, are you not?

A. When the railroads bill on us for undercharges—

Q. Yes.

A. We have endeavored in every way, and as you have the head of that department of the railroad here—

Q. No, one minute. Please read that question in order to keep the record clear.

(Question read as above recorded.)

Mr. Hillyer: Do you understand what he means by undercharges?

The Witness: You mean the shipper has been undercharged.

Q. (By Mr. Woodworth) Where the shipper has been undercharged, yes.

A. And the railroad company bills on us for the undercharge. Q. Yes. Do you pay that?

A. We endeavor in every way to collect those from the shipper for the railroad company, and we have an agreement with the railroad company that for figuring their freight, the freight that they present to us, less the fill allowance, we deduct the fill allowance, that the only place the commission man is held is for furnishing incorrect hoof weights.

"Q. Yes, but do you pay as agent for the shipper those undercharges and then take off that payment later in settlement with the shipper?

A. No, and the reason we do not is we are doing work for the railroad company; we are figuring the railroad company's bills and they are not holding us personally for those freight claims on that account.

Q. Then I understand you do not pay undercharges of that character?

A. No, because we have an agreement that covers that.

Mr. Woodward: That is all.

Q. (By Mr. Andrews) It developed in another case, Mr. Mosier, that sometimes cars are shipped in the name of the caretaker, and not the owner. A. Yes, sir.

Q. Do you know whether or not any of the persons named in appendix A were caretakers?

A. I don't know. If the stuff is billed in the caretaker's name it is always in order and the rule is in order that the proceeds go to the owner of the live stock, and naturally the owner of the live stock's name would be filled in.

Q. Do you in all cases know when a shipment is made in the name of the caretaker and not the owner?

A. In the majority of cases, yes, sir.

Q. But in some cases you don't know that?

A. I would say in all cases where the remittance is made we know. We do not remit anything to caretakers.

Q. Are shipments sometimes made in the names of several persons, or do several persons sometimes own an interest in one shipment, one or more?

A. That is sometimes the case, yes, sir.

Q. In cases like that would the names of each of those individuals be shown in appendix A?

"A. If a load of stuff was shipped by Brown and Smith, it should show Brown and Smith.

Q. Do you know whether one name of one of the joint owners or all of the joint owners' names are shown?

A. You are referring to cooperative shipments, I believe, where there is apt to be twenty owners in one shipment?

Q. Well, would all of those twenty owners appear in this list here?

A. They would not, because that is referred back to the manager of the shipping association who prorates that amount between the shippers.

Q. Will you read that answer, please?

(Answer read as above recorded)

A. Remitted back would be better than referred back.

Q. Does it frequently happen that the live stock shippers ship cars to the stock yards at Chicago to different commission men, one carload to Rosenbaum & Company and another car to another commission firm? A. That might happen, yes, sir.

Mr. Andrews: That is all.

Mr. Woodward: Just one more question, Mr. Examiner. Turning to sheet 1 of this appendix A, Mr. Mosier, there are a number of initials shown. The first one is A. A. F.; then N. B.; then A. Co., and so on down the page.

A. That is Cooperative Company.

Q. Yes, but I was referring to the initials, particularly like A. A. F. and N. B., the first two shown in the first column.. Do your records identify shippers only by such data?

A. If we could get a shipment from A. A. F., our original records might show it and then we would have

"to show in our books where remittance for A. A. F. went, and undoubtedly do.

Q. Do you know who A. A. F. might be?

A. It might be most anybody. I don't know who that A. A. F. letter was. What causes that a great many times is the railroad bills. Your agents in the country get a little tired or want to go to a ball game or something of that sort, and instead of writing A. F. Frank or A. F. Jones, they simply put in A. F. F. or A. F. J. and leave the name off, and we have to investigate to find out where that money goes.

Q. Then I understand from what you say to Mr. Andrews that the name shown as the shipper does not always represent the owner of the live stock? A. Not always.

Q. And that would be true as to certain names shown in appendix A where cooperative shipments are shown, that the association does not own the shipment, but they are owned by members of the association?

A. Yes, but each shipment is kept track of by car number, and if this reparation went into effect it would be prorated.

Q. If this reparation were awarded to you, and I mean now to the Chicago Live Stock Exchange, to whom would you pay the amounts where the names of the shippers were shown as a cooperative association?

A. We would remit it to the manager of the cooperative association who had sent in that shipment.

Q. And there are quite a number of cooperative association shipments shown here? A. Yes, naturally.

Exam. Hosmer: Any further questions on cross-examination? Anything on redirect, Mr. Hillyer?

Redirect Examination.

"Q. (By Mr. Hillyer) The names to which your attention has just been called, as I understand it, are the names of the parties who were compelled to pay these loading and unloading charges? A. Yes, sir.

Mr. Woodward: I object, Mr. Examiner; there has been no evidence to show that the witness knows anything about that. In fact, there is evidence to the contrary.

Mr. Hillyer: I will ask him if he knows that the names in that list are the names which we took off of the claims that have been filed with these defendants as names of the parties who paid these unlawful charges.

Mr. Woodward: I object. The witness has shown very conclusively that he could only identify three, as I recall.

Mr. Hillyer: No, you only asked him for three.

Mr. Woodward: At least he has not shown specific knowledge as to more than three. I don't think he could have that knowledge.

Exam. Hosmer: I think the record shows the basis for his information. If that renders him incompetent—

The Witness: If you want me to I can name a hundred.

Mr. Hillyer: Right on that point, I consider this important; if the Director General wants Mr. Mosier to sit there and go through that list of names page by page and check off those for whom he has filed claims, the complainant stands here ready and willing and offers to do it.

Mr. Woodward: Mr. Examiner, the Director General does not wish anything. He is being sued here for a large amount of money and he is insisting upon his legal rights, that complainants shall show they are entitled to money, by competent legal evidence.

"Mr. Hillyer: We are going to do that, but you said that he could point out only three of them. That is what I had in mind.

Mr. Woodward: Well, I don't say but what he could possibly point them out, but I do say his evidence does not show the specific knowledge that would entitle him to answer that question.

Exam. Hosmer: As I said before, the record shows the basis of his information, and subject to the objection the question will be answered.

Mr. Hillyer: I want to make this tender, Mr. Examiner; we are offering Mr. Mosier here as a witness for and on behalf of the Chicago Live Stock Exchange and its individual members. We can prove by him to the last detail the amount of Rosenbaum's claims for and on behalf of these shippers. Those claims have been prepared, not in the form that would make it the simplest way to present them here, namely, Rosenbaum at the top of the page and then all of the claims paid to Rosenbaum, and the reason we did not prepare it in that way was for the convenience of the railroad companies and at their request, and upon a form prepared by the Interstate Commerce Commission. That does not mean, however, that we cannot show Rosenbaum's claims if it is demanded here by the opposing side, and we propose to make a tender here and have Mr. Mosier as a typical case of a commission merchant in this reparation claim offer each and every one of his claims for reparation in this case. It will take considerable time because of the way the claims have been prepared, and the reason they were prepared in that way was for the convenience of the parties to this case and not because we wanted to prepare them in that way.

It would have been much simpler for us to put them in so we could say, 'You are the one who paid these

'claims or to whom these claims were paid, rather,' and he could say, 'Yes,' and then we could hand them in, and these railroads could check them back and forth, and there being so many railroads involved it would have taken them all of the time and expense that it has taken us to simplify this matter for them.

But we are prepared to go into all that detail and we make the tender now if the Director General takes the technical position, and we will be right here with him as long as he wants us to.

We will bring down the individual claims filed. We won't try to do that, however, before lunch, if you want to adjourn before 12:30. They are down at the stock exchange at the stock yards, but we will pick out the shipments on behalf of Rosenbaum and prove the payment of every one of these loading and unloading charges, and we here make that formal tender on this record.

Exam. Hosmer: Has counsel for defendants anything to say?

Mr. Woodward: Mr. Examiner, simply that the Director General believes there is a competent way of proving a claim for a large amount of money against the United States Government, and that the proper way is not by hearsay evidence or by ways which from the very nature of things mean that the detail cannot be checked.

While we obviously do not care to put anybody to undue inconvenience, still the complainants we submit must prove their claim by competent legal testimony. Now they are the best judge of what that evidence is.

Mr. Hillyer: Now, Mr. Woodward, will you answer this question: Are you willing to concede that we have taken a course after due consideration which is to the best interests of all parties here in checking these details you refer to? Are you willing to concede that and

"assist us along that line; or do you take the position, different from the position of the Commission and the railroads as to what was the proper way to prepare these claims, and now insist that this witness for the Rosenbaum Commission concern identify every shipment on which they paid the loading and unloading charge?

Mr. Stillwell: Can I ask one question here: Mr. Hillyer keeps saying at the request of the railroads, I would like to know what he means by that. As far as I know, none of the C. F. A. lines has requested them to prepare or assist in preparing these claims in this way.

Mr. Hillyer: Unfortunately for Mr. Stillwell, he does not have the labor of checking these claims over, but his auditor does. Now there have been auditors of these railroads who have seen this form and they said to us that this was the only way they wanted it itemized.

Mr. Stillwell: Will you give me the name of the auditor of the Pennsylvania Company who did that?

Mr. Hillyer: Our next witness will explain that in full because he personally did the whole job. It was done under his supervision.

Now in order to simplify this thing for everybody, we have gone to great labor and The Chicago Live Stock Exchange has paid out of its own pocket $13,000 in cash to prepare these claims, for which they are not going to get a cent back from the people who paid out this money. That is the care and detail with which we approached this job, and we did it to save you folks and the Commission a lot of labor and trouble. We could have brought them all in here and dumped them in here without going to this trouble, but after having gone to this trouble it does seem to be a little hard that we have to go back and do what we could have done without spending $13,000.

"Mr. Woodward: Mr. Examiner, the opportunity which the Commission affords the complainant for proving its case under the Transportation Act is by competent legal evidence. Of course I don't know the details of what Mr. Hillyer is referring to, but at this time it seems to me his attempt is to prove this claim for a large amount of money against the United States Government, and I scarcely think Mr. Hillyer can ask the Government to help him make out the complainants' case against the Government.

Mr. Hillyer: I am not asking any help from anybody. I will dump stuff on you here that will bury you alive.

I would like some expression from the Examiner as to whether he thinks we should go through with this detail, because it will mean we are going to do it.

Exam. Hosmer: The Examiner cannot bind the Commission as to what testimony it is going to consider competent, and all that, in this case. I know counsel for both sides are thoroughly conversant with the law and know what is necessary to prove reparation. I am out here to preside at this hearing and receive such evidence as is proper and competent. Now I would not undertake to say how the matter can be shortened or anything of that kind. This proceeding may go into the courts and we have got to have a record that will hold water.

Mr. Andrews: The defendants take the same position the Commission and the Administration do in that respect. We do not desire to put the complainant to unnecessary expense in preparing their case. We leave that to them to decide what is proper evidence.

Mr. Hillyer: All right. We have decided what is proper evidence, and we will take responsibility for it.

Mr. Andrews: Of course we have not had an opportunity as yet to see what Mr. Hillyer is going to offer.

"Mr. Hillyer: I will offer now as an exhibit in this case the form used in preparing these claim statements.

Mr. Woodward: Mr. Examiner, I think the exhibit is immaterial.

Mr. Hillyer: Counsel for complainant differs with you on that.

Exam. Hosmer: What is the purpose of it? It is a blank sheet of paper. I do not see the materiality of it myself.

Mr. Hillyer: We are going to offer and tender here, and these railroads have the originals, these claims made upon these forms. Of course we cannot give the railroad something we have already given them, and we cannot file with the Commission papers we have already filed with them, but the Commission told us to file them and that one copy for the Commission and one for the railroads would be enough.

Exam. Hosmer: Is that in Docket 9977?

Mr. Hillyer: Yes.

Exam. Hosmer: But as I understand it, the shipments involved in this case are separate from those involved in that case.

Mr. Hillyer: No, they are all in the same case. They are all compiled together.

Mr. Examiner, let me make this plain. It would have been almost impossible for us to have gone all over this work twice and have prepared two sets of claims. We considered it wholly unnecessary to do that, because the charge was in effect between two certain dates, and we have proved by proper testimony that those charges were excessive and unreasonable, and it would be unjustly discriminatory to refund that money to some shippers and not refund it to others. There is no necessity for separating the claims. We have separated the pleadings because of legal necessity, the passage of

"time after the trial of the first case makes that necessary.

Now to go ahead and divide these claims up is simply a question of bookkeping, and if the railroads want us to do that we offer to start doing that, but when they got those two sets of claims all they would have to do would be to add the two together and pay the balance.

Exam. Hosmer: This will be received subject to objection.

(The document was thereupon received in evidence, marked 'Complainant's Exhibit No. 1, Witness Mosier' and is forwarded herewith)

Mr. Woodward: In answer to Mr. Hillyer's observation on that point, Mr. Examiner, I should like to point out that the issue in this case is presented in his complaint in Docket 12614. We are here at this time to try the fact as to whether certain claimants are entitled to certain money. Now obviously claims that have already been filed with the carriers in no way substantiate complainant's contention at this time on that issue.

Exam. Hosmer: I don't see what bearing the filing of the claims with the carriers had, in so far as this proceeding is concerned.

Mr. Hillyer: I thought I made that clear. We put all of the claims in one list and gave them all to you people.

Your point, Mr. Woodward, as I understand it, amounts to this, that we should have prepared a claim under Docket 9977, put that in, and then we should have prepared another claim and it in the other case. We decided to put it all in at one time.

Mr. Andrews: As I understand it, you sent statements of shipments to the auditors of the defendant carriers?

Mr. Hillyer: I will ask Mr. Park to answer you. (A discussion followed off the record)

"Exam. Hosmer: This exhibit will be received in evidence at this time and marked complainant's Exhibit 1, Witness Mosier.

Mr. Andrews: I would like to make a request here that Mr. Hillyer give us the names of the officers of the railway companies to whom the lists of shipments were sent, and also a copy of the letter transmitting the statements.

Mr. Hillyer: I don't know as we will give you the letter, but we will certainly tell you who we sent that to. We will give you all we can.

Mr. Woodward: So as to anticipate certain objections on the part of the defendants, I might say the evidence Mr. Hillyer refers to would be objected to in any event without other proof than he has appeared to offer.

Exam. Hosmer: That is, the statements of claims?

Mr. Woodward: Yes, statements of claims. Now, it is evidence in support of those claims that we are after here.

Mr. Hillyer: What do you mean by evidence in support of them? Evidence that we made the shipments and that the statements were made? Are you representing all the railroads here, Mr. Andrews?

Mr. Andrews: The Western Trunk Line carriers.

Mr. Hillyer: And you make this request of yours on behalf of the Western Trunk Lines as well as the Santa Fe? Mr. Andrews: Yes, sir.

Mr. Hillyer: What was your request now? You wanted what? The names of the officers?

Mr. Woodward: The names of the officers receiving the statement, and also a copy of the letter.

(A discussion followed off the record)

Mr. Andrews: Mr. Hillyer, were all of these claims

"filed in Docket 9977, or do they include the additional shipments involved in the case we are trying here?

Mr. Hillyer: I will state again for about the fourth time, that the claims we have filed cover every shipment that moved while this unlawful charge was in effect.

Mr. Andrews: So it included claims involved in Docket 9977 as well as in this case?

Mr. Hillyer: Of course it does.

Mr. Andrews: So it included claims involved in Docket 9977 as well as in this case?

Mr. Hillyer: Of course it does.

Mr. Andrews: All right, that is all I wanted to know.

Exam. Hosmer: We will adjourn until two o'clock.

(Whereupon, at 12:30 o'clock P. M. an adjournment was taken until 2:00 o'clock P. M.)

After recess. 2:00 P. M.

Exam. Hosmer: You may proceed, Mr. Hillyer.

Redirect Examination.

D. C. MOSIER thereupon resumed the stand and testified further as follows:

Q. (By Mr. Hillyer) Referring to the question asked you by Mr. Woodward in connection with the names in this list, you identified, I think, three names at his request? A. Yes, sir.

Q. Is it your understanding that he wanted any more of them identified?

A. It is my understanding that he said that was sufficient.

Q. That was enough? A. That was enough.

Mr. Woodward: I don't recall making any such statement, Mr. Examiner.

Mr. Hillyer: If he desires, you are willing, are you

"not, to go through the entire list and identify the other shippers?

The Witness: I am willing to go through the entire list if he wants to put up with it.

Mr. Hillyer: As I understand it, the lists which Mr. Park will introduce contain also the same names, and with the shipments upon which the charges were paid?

Mr. Woodward: I object, Mr. Examiner, as irrelevant.

Exam. Hosmer: I don't see how you can refer to future evidence to be given.

Mr. Hillyer: What is the objection now?

Exam. Hosmer: You are referring to something that is not in the record at the present time. Is that your objection, Mr. Woodward?

Mr. Woodward: Yes. We could not possibly cross examine on that.

Mr. Hillyer: All right. I have a right to assume anything I want to. I will assume that Mr. Park is going to put in a list of shipments that you paid this loading and unloading charge on for your people. If he does put in such a list, have you knowledge that that list contains the names of the shippers and the identification of the shipments on which this loading and unloading charge was paid?

Mr. Woodward: I object. Exam. Hosmer: Objection sustained.

Mr. Hillyer: I based that question on an assumption. As I understand the rules of evidence a man can ask a hypothetical question on any subject he wants to. I have not based that on any actual state of facs. I have based it on an assumption.

Q. (By Mr. Hillyer) Mr. Woodward asked you about the complaints you had received and the informa-

"tion you had received from the people you say you represent. I will ask you whether or not you have received a great many complaints both verbal and written as to these loading and unloading charges.

A. Why, at the time the loading and unloading charge was put into effect we had a great many inquiries and a great many complaints that the shippers should pay in addition to all other charges a loading and unloading charge. In fact we personally had one of our biggest shippers in the west object to it very seriously.

Q. The action of the Exchange in opposing this charge was based on these complaints, was it not? A. Complaints from the shippers?

Q. Yes, complaints from the shippers? A. Yes, sir.

Q. And the charge was attacked by The Chicago Live Stock Exchange, as you have testified, as a representative of these complainant shippers? A. Yes, sir.

Q. And also on behalf of the commission men themselves as factors and agents for these shippers?

Mr. Woodward: I object to this leading line of questions, Mr. Examiner.

Q. (By Mr. Hillyer) I will ask you on what grounds you did file this complaint. State very fully the whole basis of it.

A. When this was first put into effect and we had the first notice of the 25 cent loading and unloading charge, as representatives of the shippers we took it up immediately, and at once, as the account sales went back to the country shippers, showing this 25 cent unloading or 25 cent loading charge, they immediately complained about it; and as I have before stated, one of our largest shippers, A. E. deRiqules of Denver, Colorado, one of the largest shippers to this market, objected very stren-

"uously to the loading and unloading charge, and wanted to know what action was being taken.

Q. Referring to the three shippers that Mr. Woodward asked you to identify, as representative have you filed a claim in this case on behalf of those shippers along with all of your other shippers seeking the return of this unlawful charge? A. We have.

Q. Has the Chicago Live Stock Exchange discussed this loading and unloading charge in its meetings? A. It has, yes, sir.

Q. Have the committees of The Chicago Live Stock Exchange taken notice of this?

A. They have, yes, sir, and also the board of directors.

Q. Have the complaints and the facts with relation thereto, so far as you are posted, been identical for all of the members of the exchange, in accordance with your testimony here about your own experience? A. Yes, sir.

Q. Your testimony here is offered as representative of all the members of The Chicago Live Stock Exchange?

Mr. Woodward: Mr. Examiner, I object, unless authority is shown as to all the members. He can offer it as to the Exchange, but all the members is something that he must show his authority to speak for.

Exam. Hosmer: He has testified that he is an officer of the Live Stock Exchange.

The Witness: I have testified I was chairman of the transportation committee, and it has already been brought before the board of directors.

Mr. Woodward: But, Mr. Examiner, all the members is a big order.

Mr. Hillyer: Yes, there are 101 of them.

The Witness: No, you are mistaken there, Mr. Hill-

"yer; there are more members, but that is all the firms.

Mr. Woodward: It includes all of them.

Mr. Hillyer: We offer that in good faith, that this man's testimony is representative of the collection of this 25 cent loading and unloading charge by all the members of The Chicago Live Stock Exchange in this case.

Mr. Andrews: I object. I want the Examiner to understand that these defendants do not admit that they collected this loading and unloading charge complained of in this case. Those charges were collected by the Union Stock Yards Company.

Exam. Hosmer: That has been stated. As to Mr. Woodward's objection, I think the witness is qualified, inasmuch as he represents those members and the exchange itself.

Mr. Woodward: Just for the sake of the record, may I have an exception?

Exam. Hosmer: Certainly. In other words, I think he is competent to testify as to the general practice. Of course as to the specific technical details that is another question.

Mr. Woodward: As I understand it, he was making his testimony apply to all the members individually as well as the corporate organization.

Mr. Hillyer: That is correct.

Mr. Woodward: Now I say he has not shown that he has that authority when there are admittedly over one hundred members. There is no way of cross examining them.

Mr. Hillyer: All right. I will ask you then if you are authorized by the members of The Chicago Live Stock Exchange individually and collectively to represent them at this hearing and disclose on this record

"what the custom and the practice is in connection with the payment by them of this unlawful charge?

The Witness: I am, yes, sir.

Q. (By Mr. Hillyer) Mr. Mosier, I have here your press copy book of the account sales sent to the shippers. As I understand it, *you do not* care to part with this record and put it in as an exhibit; you cannot afford to do that, can you?

A. We would rather retain that in our records.

Mr. Hillyer: In proof of these individual payments, Mr. Examiner, it will be necessary for the Commission to postpone this hearing, and as it is the rule of the Commission to set these hearings at the convenience of the shippers, I will ask to have the future hearing set at the Union Stock Yards, and that at that time Mr. Mosier and the other members of The Chicago Live Stock Exchange will read into the record in this case the proof of the payment of the unloading charge as to each shipment. We were not prepared to do that today because we did not imagine in all reason that anybody would call for it. It has been called for and we propose to give it to them. We are going to read it into the record carload by carload.

Mr. Woodward: Mr. Examiner, I would like to say, speaking for the Director General, that I have not called for anything.

Mr. Andrews: I don't recall that I called for anything.

Mr. Hillyer: You made your formal objections here to the testimony we offered in place of it. Mr. Woodward: Yes.

Mr. Hillyer: And we of course have the right to decide what we will do, and that is what we choose to do.

Mr. Woodward: That is perfectly satisfactory, but I did not call for anything.

"Mr. Hillyer: In the meantime, Mr. Examiner, I will say this, that it is the purpose of the Chicago Live Stock Exchange to send its traffic committee to Washington and interview the Director General and the chairman of the Interstate Commerce Commission and get from them a stipulation, if possible, as to what will be necessary in this case. I imagine Mr. Woodward is not in a position to enter into any stipulation with us here, and certainly his course on the record indicates that probably he would not do it, but we think probably the Director General will when he finds out the circumstances.

Mr. Woodward: Of course, Mr. Examiner, the complainants have the right to do as indicated. However, I would object to any hearing being set at the stock yards; it is bad enough to bring us out here a thousand miles without taking us to the back door of the complainant. Then in view of the fact that after traveling that thousand miles and bringing our witnesses here to testify in this case, we find they are not prepared to go on with the trial of their case and to offer legal proof, I would seriously object to us being brought to the stock yards, and I would even object to our being brought to Chicago. It seems to me that this case might be heard in Washington.

Exam. Hosmer: That will be determined by the Commission.

Mr. Hillyer: I don't believe it will be necessary for us to do anything further in this case. I believe when we make the proper presentation to the Director General, that so far as he is concerned no further hearing will be necessary.

Mr. Woodward: I think, Mr. Examiner, when the complainants prove their case the Interstate Commerce Commission will act properly.

"Exam. Hosmer: Then it is my understanding that you have no further testimony to offer today?

Mr. Hillyer: Yes, I have another witness.

Exam. Hosmer: Are there any further questions at this time in cross examination?

Recross Examination.

Q. (By Mr. Woodward) You spoke of a shipper, A. E. deRiqules of Denver. A. Yes.

Q. Objecting to the loading and unloading charge and wanting to know what action was being taken. Have you any authority from Mr. deRiqules, or had you before this case was begun to bring it for him?

A. We had a complaint from deRiqules almost immediately.

Q. That is, he complained to you about it. Did he request you, that is, The Chicago Live Stock Exchange, to bring this complaint specifically?

A. He requested us in the form of asking us what we were going to do in the matter.

Q. But he did not ask you to bring this complaint before the Interstate Commerce Commission?

A. Practically, yes.

Q. Did he in fact? A. He did not demand it.

Q. Did he request that you file a complaint with the Interstate Commerce Commission?

A. He asked us what action we were going to take, and we told him we were going to file a complaint. He was agreeable that that was the thing to do.

Q. Have you any written authority from him?

A. I may have a letter. I don't know.

Q. Before the action was taken? A. Before the action was taken.

Q. But you haven't it with you? A. I haven't it with me, no.

"Q. He did not make a specific request then before you took action, requesting that you file a complaint with the Commission?

A. He simply asked me what I was going to do, and when I told him, he agreed with that action.

Q. How many other customers of yours or country shippers of yours made this complaint to you? When I say 'you' I am speaking of your firm.

A. I couldn't say that, as to how many, but it was a case of every day, 'What are you going to do about that unloading charge? Are you going to let them put that over us, the same as you have the terminal, for years?'

Q. Can you name some others besides deRiqules? You are speaking of your firm, are you not?

A. Yes. I would not say I could name them offhand, no, but it was an every day occurrence that shippers complained about that.

Q. You spoke about being authorized by the members to make your testimony the testimony of all the members, is that a fact? A. Yes.

Q. How many members have you in The Chicago Live Stock Exchange?

A. Something over 500 members.

Q. Does every member know that this action is being brought?

A. The board of directors has that power, and the rules and by-laws of our Exchange are so that when you do testify, you testify for each and every member of the Live Stock Exchange.

Q. That may be, but that was not my question. I say, do all those 500 members know that this action was to be brought?

A. All the 500 members? Q. Yes.

A. I think without a doubt they knew it.

"Q. How did they know it? A. Because we published it and told them.

Q. It is simply your deducing from the fact that you published it, according to the rules, that they knew it?

A. That is the only way they would have to know it.

Q. Then you don't know, as a matter of fact, personally? A. Yes, I do know.

Q. That all these 500 members knew the complaint had been brought?

A. I think without a doubt they did.

Q. But you are assuming that? A. No, I am not assuming that at all.

Q. Did you go to each member? A. No, I did not.

Q. Did each member or person write to you? A. No, sir.

Q. So that you neither wrote or spoke to all the members about this specific action being begun?

A. Not personally, no. There is one thing I would like to explain here, if I may, Mr. Hillyer.

Mr. Hillyer: All right. Go ahead.

The Witness: They have stated that the stock yards company makes this collection and that they have nothing to do with it. Now I want to explain one thing to you people that you may not know about.

Mr. Andrews: We are going to explain that.

The Witness: It comes on the stub of your bill, our charges. Your lading, your minimum weight, your feeding in transit, whatever charge is incurred in transit, is put on the stub of your bill by your representative, your terminal charge, and your loading and unloading charge is put there by yourselves, and the shipper charged according to what you had on your bill.

Mr. Andrews: But what I want to get at is, you paid these charges to the stock yards company?

"The Witness: We paid the charges for the shipper based on what the railroads presented to us on the stubs of their bill.

Mr. Andrews: Yes, but you paid the money to the stock yards company?

Exam. Hosmer: That is a matter of defense.

Mr. Andrews: Yes, we are going to show that.

Mr. Hillyer: It is already in the record at great length.

Mr. Andrews: It will be in at even greater length.

Exam. Hosmer: Is that all the cross examination?

Mr. Stevenson: Might I ask a question? Exam. Hosmer: Certainly.

Q. (By Mr. Stevenson) The question was raised this morning, Mr. Mosier, concerning shipments on behalf of cooperative associations. You know, I presume, that in Illinois, and I understand a great deal of the present complaint covers shipments from Illinois points of origin—

Mr. Hillyer: Only in so far as Illinois ships here in comparison with all these other dozen or twenty live stock producing points.

Q. (By Mr. Stevenson) In any event, in the state of Illinois a great deal of land is operated by tenants for the benefit of themselves and the owners of the land on a share basis. You know that, do you not, or do you?

A. To some extent, yes, sir.

Q. In many instances the tenants are engaged in cattle raising for their benefit and the benefit of the landlord. Now, in case a shipment would come to the firm of Rosenbaum & Company from such a tenant in his own name, without the interest of the landlord being disclosed in the billing, on what basis would you handle that claim for that tenant?

Mr. Hillyer: I object to that and instruct the wit-

"ness not to answer that because that is a question that has been passed on by the Commission a good many times, and I am fully advised as to that situation and this witness is not.

Mr. Stevenson: So far as I know, you may perhaps be fully advised and you may perhaps fully advise me then, Mr. Hillyer.

Mr. Hillyer: As I understand the ruling of the courts on the question, the reparation is due the man that paid the unlawful charge, and if that shipper bore the name of John Smith or a cooperative company, who paid this unlawful charge, it is our position that the reparation has got to be paid back to him, and that you or no one else has any right to follow it any further.

Mr. Stevenson: You are in error, I think, in stating the man who paid the charge is entitled to the reparation. It is the man who bore the charge. I am speaking, Mr. Hillyer, partly, if you please, on my personal account, because I am here in the rather dual capacity of representing certain railroads, and I am incidentally a shipper of live stock from Illinois points to the Chicago market, which live stock is handled by a tenant in his name. I do not know whether that tenant has authorized Mr. Mosier or any member of The Chicago Live Stock Exchange to file a complaint on his behalf. I do know that I have a direct interest in any amount that may be repaid to that tenant because I bore one-half of such charge.

Mr. Hillyer: I might say on that point that these commission merchants are interested here as factors in this reparation the same as agents for the shippers, and the Commission has held that the factor has a right to reparation.

Mr. Andrews: Just to the contrary, Mr. Hillyer, in a decision right before me now.

"Mr. Stevenson: I have not authorized any factor or agent to make the collection of such reparation on my account.

Mr. Hillyer: You do not have to authorize the factor. He has such right of his own.

Mr. Stevenson: He has no other general authority other than the disposition and the sale of my live stock and the remittance of my share of the balance to me.

Exam. Hosmer: Let us avoid this matter of argument at this time, gentlemen.

Mr. Stevenson: I have asked the witness a question, and Mr. Hillyer has tried to prevent his answering it. I think, Mr. Examiner, this bears directly on the subject as to the authority of the commission merchant to pursue this case on behalf of certain individuals whose names probably appear—I don't know, but they probably appear in this list.

Mr. Hillyer: I did not object to your line of questioning because I do not think it is good policy to bring out anything that is worth while bringing out, but you started out here by telling this witness a good many things about the cooperative association and tenants and farmers—

Mr. Stevenson: I told him nothing about the cooperative associations.

Mr. Hillyer: (continuing)—which he did not cover at all on his direct examination, and if you want to make him your witness you go ahead and do it. He is not my witness on that subject.

Mr. Stevenson: I submit I don't have to make him my witness on that subject, Mr. Examiner.

Exam. Hosmer: No, the question was properly related to the direct examination on the question of authority.

"Mr. Hillyer: What was the original question? Let us get back to that.

(Question read as above recorded)

Mr. Hillyer: You can answer that question.

The Witness: We would consider this man was a partner and that he had a right to ask us to file a claim, he being interested and one of the partners in the production of this live stock, and if you had anything against that shipment it would be up to you to notfiy us that you were interested and you wanted the money to go to so-and-so.

Mr. Stevenson: Wouldn't you consider it necessary to secure the authority of the landlord, who was a party directly interested in the matter, before pursuing the claim?

The Witness: Not if the man who shipped the live stock was interested in it financially and if the money went back to him. We would consider him a partner and with authority to tell us to proceed with the claim.

Q. (By Mr. Stevenson) You would consider that a remittance to the tenant would completely close the account, so far as you are concerned, is that correct?

A. If he was a partner in the ownership of the live stock.

Q. You would not know whether he was or not.

A. Then we may be liable ourselves. It is up to us. If we make a misappropriation of funds then we have got to defend that appropriation ourselves.

Mr. Woodward: In all events, so far as you are concerned, the man who offers you live stock to sell owns the live stock?

The Witness: Absolutely, yes, sir.

Mr. Woodward: And when you settle with that man you have no further trouble in the matter? The Witness: No, sir."

EXCERPTS FROM THE TESTIMONY OF H. R. PARK, TRAFFIC MANAGER OF THE CHICAGO LIVE STOCK EXCHANGE, ORIGINAL EXHIBIT NO. 8, PAGES 96 TO 126, BOTH INCLUSIVE.

"Q. (By Mr. Hillyer) What is your position, Mr. Park?

A. Traffic manager of The Chicago Live Stock Exchange.

Q. What has been your traffic experience in past years?

A. For the last two years I have been connected with The Chicago Live Stock Exchange as its traffic manager. The previous eight years in industrial traffic work; the previous ten years in railroad traffic and operating work.

Q. Did you testify in Docket 9977? A. Yes, sir.

Q. Are you familiar with the physical handling of live stock into the Union Stock Yards? A. Yes, sir.

Q. Have you yourself ridden live stock trains and followed the complete transaction through from the point on the trunk lines to final delivery and unloading at the stock yards?

A. I have, yes, sir.

Q. Will you describe briefly but with some detail the physical transaction which takes place in the delivery and the unloading of live stock, and also the loading of live stock out at the Union Stock Yards?

A. These trains are handled into the stock yards in solid train load lots by the trunk line or road haul carrier engine, and also the road haul crews, being switched into a long chute capable of unloading forty to fifty cars at a time. The cars are set in at the unloading chutes, and unloading men working for the Union Stock Yards & Transit Company start at each end of the train and unload these forty or fifty car trains in from a minute to

"a minute and a half per car. The cars are then pulled out in solid trains of empties and go back for additional loads. Is that the explanation you wish?

Q. Yes, that is it. Now please give in a similar manner the transaction which takes place in the payment of these charges, including freight charges and the unloading charge, and so forth.

A. The conductor in charge of the train into the unloading chutes has the waybills on each and every car in that train. These waybills are turned over by the railroad conductor to the man at the unloading chutes who conveys them to the joint agent, Mr. E. L. Kemp. Q. Joint agent of whom?

A. Joint agent of the different railroads centering at the stock yards, and he makes some checks and then sends the waybill stub on each individual car to the individual consignee or commission merchant for information as to the correct weights upon which freight charges are to be assessed.

The commission man places upon this waybill stub the correct weight, and the waybill is then returned to Mr. Kemp who conducts some further clerical work in connection with this waybill, and it is then turned over by him to the Union Stock Yards & Transit Company, who submits to the commission merchant twice a week a statement of all of the charges due from that commission merchant, the commission firm paying to the Union Stock Yards & Transit Company said freight charges, which in the cases involved in this hearing included the unloading charge of 25 cents per car.

Is that what you wanted?

Q. Yes. Are the members of The Chicago Live Stock Exchange shown as parties to the transportation record in all of these cases? A. They are, yes, sir.

"Mr. Woodward: Mr. Examiner, I do not think that question is clear.

Mr. Hillyer: It is my purpose to make it clear.

Mr. Woodward: A party to the transportation record would be either a consignee or consignor, would it not?

The Witness: Well, the members are the individual commission houses.

Mr. Woodward: That is assuming all of the commission men are members of The Chicago Live Stock Exchange.

The Witness: All of the commission men involved in this case are members of The Chicago Live Stock Exchange.

Mr. Woodward: But that was not the question. It assumed that all the commission men were members of The Chicago Live Stock Exchange. That has not been shown.

Q. (By Mr. Hillyer) I will ask you if they are. A. They are.

Q. Are you a member of The Chicago Live Stock Exchange? A. I am.

Q. That is also true of outbound shipments, is it not, that the members of The Chicago Live Stock Exchange are parties to the transportation record when these shipments move outbound? A. That is a fact.

Q. And your testimony as to the unloading charge applies as well to the loading charge? A. Yes, sir.

Q. Now will you explain a little more in detail the transaction as to the outbound shipment?

A. The outbound shipment is largely similar to the inbound shipment, in that the railroad company simply sticks a bunch of empties into the loading chutes and there the reverse operation is performed. The animals are run into the cars and it requires a trifle longer time

"to load, but very little, and then the cars are sealed up and started on their way eastward, as a rule, in solid trainloads, or wherever they may be destined.

Q. About the payment of the loading charge, how is that done?

A. That all depends on the manner in which the freight charges are paid, Mr. Hillyer. If they are prepaid the commission merchants at the Union Stock Yards pays all of the charges, including the 25 cent loading charge. If they are paid at destination, the consignee pays the charges including the loading charge.

Q. As I understand it, there is quite a movement of fatted stock to the packers in the east? They buy this stock on the exchange and they attend to the handling of their own shipments eastbound? A. That is a fact.

Q. Are they members of The Chicago Live Stock Exchange or are they represented by members of The Chicago Live Stock Exchange?

A. In some cases they are represented by the members of the Live Stock Exchange, and to the extent that they are represented, they are involved in this case; and to the extent that they are not represented they are not involved in our complaint.

Mr. Woodward: May I inquire what the packers refers to?

Mr. Hillyer: I distinguish between the packers who consume these shipments of live stock as against the commission merchants who do not butcher live stock themselves.

Q. (By Mr. Hillyer) Now with respect to these outbound claims on loading charges, those claims have been handled by the packers themselves, have they? A. So I understand.

Q. Except, I think, we have some claims for the Cudahy Packing Company.

"A. And we have some claims for the smaller packers where the shipments were purchased on the Chicago market by members of our Exchange or parties of record in this case.

Q. Mr. Park, what have you to say as to the authority of the Exchange through its organization and through the members of the Exchange to pursue this claim for reparation?

A. Mr. Hillyer, we have powers of attorney for all the shippers upon all of the shipments upon which we have filed claims.

Q. Have they given you instructions to pursue this matter with the Commission?

A. Yes, I have almost had to hire an extra man to take care of the complaints for them, because they have not received the return of the money involved in this case.

Q. Is your office the office where all of these transactions in connection with the Interstate Commerce Commission claims center?

A. Yes, and it is the office that is looked to by all the farmers and shippers for reimbursement for overcharges and loss and damage and reparation claims under this case.

Q. And is it looked to by the officers of the railroads who have matters coming under that general description? A. Yes, sir.

Q. Do you have personal and direct relations with the officers of the railroads on all of these questions? A. Yes, sir.

Q. Will you describe the preparation of these claims that have been presented, showing the individual shipments, reading into the record the information that is given as to each shipment, and I will ask you to state also the officers of the railroads upon whom you served

"these claims, and also state what you did in the way of filing these claims with the Interstate Commerce Commission; and also state whether or not these claims cover all of the shipments that moved during the entire period when this charge was assessed, which shipments are involved in Docket 9977 and in Docket 12614?

Mr. Woodward: Mr. Examiner, first of all I would like to inquire the purpose of this question. There are certain papers referred to as claims. I understand the claims are set forth in the complaint with the Appendix A. Any additional papers and data in regard to those claims would have to be presented here in the testimony, and I might as well make the objection in the beginning in order to avoid detailed objection, that that would be hearsay evidence and would not be admissible to prove, in an action to recover money, we will say, the facts, because they are hearsay, and are objected to.

Now the testimony—and perhaps I anticipate on this—is in the nature of hearsay evidence, and in so far as it is of that nature I give notice that I shall and am obliged to object to its admission.

Mr. Hillyer: All right. Read the question.

(Question read as above recorded)

Mr. Woodward: Further, Mr. Examiner—

Mr. Hillyer: Just a moment. I thought you had finished your objection. Mr. Woodward: Not entirely.

Mr. Hillyer: I will have to have him read the question over again then.

Mr. Woodward: Further, Mr. Examiner, whether these names are filed with the carriers or not is absolutely immaterial, and upon whom they are served is absolutely immaterial.

Mr. Hillyer: Isn't that a matter of argument? Mr. Woodward: This is a matter of objection to certain specific testimony offered.

"Mr. Hillyer: All right, you have the objection; now we will have the answer.

Exam. Hosmer: This Docket 9977, is it your intention to read into the record the details of those shipments?

Mr. Hillyer: No, we are not going to put into the record the detail of those shipments at this time. My question was of a more general character than that. Suppose I ask him each question separately?

Exam. Hosmer: I think that would be better.

The Witness: I have it written down here, Mr. Hillyer.

Mr. Hillyer: Have you prepared a list of shipments of live stock to the Chicago market upon which shipments the loading charge condemned in Docket 9977 was assessed? The Witness: I have.

Q. (By Mr. Hillyer) What did you do in preparation for preparing those statements, in order to find out what information would be necessary?

Mr. Woodward: Objected to as immaterial.

Exam. Hosmer: The objection will be overruled for the present.

The Witness: I took the matter up with you and you furnished me advice that you had secured from the Interstate Commerce Commission to furnish the proof in a certain form.

Mr. Woodward: I ask that the statement of the witness be stricken from the record.

Mr. Hillyer: Now will you take a copy of that, Mr. Park, and read the heading into the record?

Mr. Woodward: Mr. Examiner, that is hearsay evidence as to a statement of what the Interstate Commerce Commission did.

Exam. Hosmer: Anyway, I do not think it is very material. As to this particular document that you are about

"to read the headings of, that is a copy of your Exhibit No. 1 which you submitted this morning, is it not?

Mr. Hillyer: That is true.

Exam. Hosmer: Then there is no necessity for reading it into the record.

Mr. Hillyer: No, it is already in the record.

Q. (By Mr. Hillyer) Describe in detail how you filled out these schedules and prepared these statements?

A. Before I made up these claims I talked to the accounting officers of the several railroads.

Q. Name the railroads.

A. Mr. Frank Main of the Rock Island.

Q. What is he on the Rock Island? A. Auditor.

Q. Mr. Frank Main, auditor of the Rock Island Railroad.

A. Yes, sir. I also talked to the auditor of the C. M. & St. P., I don't remember his name; and I talked to two or three other subordinate men in the accounting departments of railroads, and from my conversation, while it—

Mr. Woodward: Now, Mr. Examiner, I object. There is no opportunity to cross examine these gentlemen on this hearsay testimony.

Mr. Hillyer: The Commission does not enforce any strict rule of hearsay. If they did the railroads would never get any testimony in in these cases.

Exam. Hosmer: The objection will be overruled for the reason before noted in the record.

The Witness (continuing): And I learned that the most expeditious manner of making out these claims was to make them out against each railroad separately, making each railroad's claim separate for each individual month, aggregating each month's business, in so far as the unloading and loading charge was thus illegally assessed, and show the interest thereon, and show the shipments in absolutely chronological or date order.

"The claims were thus made up. This makes it possible for each individual railroad company to very easily check or verify the car numbers of shipments and the correctness of the amount charged in so far as the unloading or loading is concerned.

These statements after they were prepared, why we sent one copy of each individual claim to the Interstate Commerce Commission last February. One other copy was sent to each individual railroad with the possible exception of a few small lines that have not to date been entered, but all of the western and all of the big lines have been filed with the traffic official in charge of reparation claims. There is such a gentleman on each line and in each instance it was filed with him after I ascertained his name.

Q. (By Mr. Hillyer) In getting this information that you placed upon these statements, what records did you take it from?

A. From the records of the commission firms and the stock yards Company.

Q. If you had prepared these claims as for each commission man instead of preparing them the way the auditors of the railroads asked you to prepare them—

Mr. Woodward: I object.

Q. (By Mr. Hillyer—continuing)—what would have been the practical result of each railroad trying to check its proportion of several hundred claims?

Mr. Woodward: I object to that question, Mr. Examiner, because there is no evidence that the auditors of the railroads requested them to do it in that way.

Mr. Stillwell: I don't see what difference it makes if it was done this way.

Mr. Hillyer: You folks are not trying this case for me. I am trying it the best way I can, and I prefer to continue in my own way.

"The Witness: My answer is bedlam.

Mr. Woodward: May I have an exception noted on the record, Mr. Examiner? Exam. Hosmer: Yes.

Q. (By Mr. Hillyer) Explain in detail how each railroad would have to check its portion of these several hundred claims instead of having one claim presented to it?

A. I don't know how it could do it.

Q. It could not possibly do it, could it? A. No, sir.

Mr. Andrews: I object to this testimony, Mr. Examiner.

Mr. Hillyer: It has already been objected to four times. Mr. Andrews: I am going to object again.

Mr. Hillyer: All right, make it unanimous.

Mr. Andrews: It doesn't make any difference what claims have been filed with the railroad companies. It is just a backhanded method of stinging the railroad corporations.

Mr. Hillyer: I object to that remark, Mr. Examiner. That is not a proper statement.

Exam. Hosmer: Have you finished your statement? Mr. Andrews: That is all I have to say.

Exam. Hosmer: I do not think this statement would have any bearing on the liability of the railroad. It may be permissible in showing why this form here was drawn up. I don't see the materiality of it, but if Mr. Hillyer desires to put it in in that form I will permit him to show that.

The Witness: Mr. Examiner, I most bitterly resent the insulting remarks made by the railroad attorney here with reference to backhanded attacks. I don't think I should be subjected to any such thing as that.

Mr. Hillyer: We want that to show on the record, Mr. Examiner.

The Witness: Yes, I want that on the record. I want

"the Examiner to understand that I resent any such low down stuff as that.

Exam. Hosmer: I don't think it was meant for you personally.

Mr. Hillyer: I don't know who it was meant for. If it was not meant for him, it was meant for me, and I resent it just as much as he does, and I want that on the record.

The Witness: I have been in many such cases and I have never been subjected to any such statement before.

(A discussion followed off the record)

Mr. Andrews: Mr. Examiner, that was not intended as any personal reflection on either Mr. Park or Mr. Hillyer. I was merely trying to enter an objection.

Q. (By Mr. Hillyer) Will you take a bunch of those claims there and in some detail, taking the representative statements, just show how the claims were made up.

A. For instance, I have before me a statement against the Santa Fe. This includes all the claims against the Santa Fe, and it starts out with the car which had assessed against it the unlawful 25 cents unloading charge. That is car 54,809, Atchison, Topeka & Santa Fe, which was delivered at the Union Stock Yards June 29, 1917, originating at Cardy, Missouri, consigned by Agren Brothers to Messrs. Swiney Brothers Company, Union Stock Yards, Chicago. In addition to the regular freight charges collected from Swiney Brothers on this shipment, there was a 25 cent so-called unabsorbed unloading charge.

Q. Is Swiney a member of the Chicago Live Stock Exchange? A. Yes, sir.

Mr. Woodward: To make that specific, Mr. Examiner, I am again objecting to this evidence as hearsay

"evidence and not competent legal evidence to support the claim.

The Witness: I might say that Messrs. Agren Brothers asked me to file this claim. They furnished me a power of attorney and instructed me to recover at the earliest possible moment the amount involved. If that is not competent legal testimony, I don't know what is.

Exam. Hosmer: There is no need to argue the question. The objection will be noted.

Q. (By Mr. Hillyer) Now will you state if the example you gave of the claim on that carload for that unloading charge is representative of the items shown on all of these claims that you have prepared and filed in this case?

A. Yes, sir, that is the fact.

Q. The packages on the table over there (indicating) contain the third copy or the copy which you retained for yourself, of each one of these claims? A. Yes, sir.

Mr. Woodward: I object to that statement, Mr. Examiner. That is obviously improper examination.

Exam. Hosmer: He can tell what is in the package.

Mr. Woodward: But how can we cross-examine him on what is in the package?

Mr. Hillyer: We are going to give you a chance.

Mr. Woodward: The whole point is that it is not in evidence.

Mr. Hillyer: We will offer these packages in evidence at this time. They are the only copies we have left of these claims, and you have a copy of them.

Mr. Woodward: I object to his offering this in evidence, on the ground of its being hearsay and not competent legal testimony.

Exam. Hosmer: Just a moment; these are your office copies of these claims?

"Mr. Hillyer: Yes.

Exam. Hosmer: And I understand two copies of the originals of each are in the files of the Commission?

Mr. Hillyer: Yes, sir, and another copy of them, as just presented, has been served upon the proper officers of these defendants?

A. On each one of them. Q. Yes.

A. And the Director General as well. Q. Yes, they all have them.

Mr. Woodward: I have no knowledge of that service. It may or may not be so, but nevertheless I would not consider that that would mitigate the hearsay character of the testimony.

Exam. Hosmer: It is your purpose to introduce these into this record at the present time?

Mr. Hillyer: We offer them as exhibits here if you want additional copies. The Commission has copies in Washington, and I have a letter from the Commission saying it will be only necessary for us to prepare two copies, one for the Commission and one for the defendant. We prepared a third copy for ourselves, and this is the third copy. If we offer this copy in this hearing the Commission will then have two copies and I presume we can get one of them back.

Exam. Hosmer: I was going to say I see no necessity for formally putting this in the record here, inasmuch as it is in the files of the Commission at Washington. I want to shorten this hearing as much as possible and give everybody a chance to make their objections as to the probative value of this evidence, and I think that can be done without very much difficulty by simply stating what this is and where the copies are and for what purpose they are offered at this time, and then let the record show the objections for each side and let it go into the record in that way.

"Mr. Woodward: I object to that on the ground of hearsay.

Mr. Hillyer: We offer these statements at this time for the purposes of the record in this case as the statements of the shipments involved in this case on which reparation is claimed by the complainants in this case; and tender is made of these statements for use at this trial for the cross-examination, by the gentlemen on the other side, if they want them for that purpose or for any other purpose for which they can be used here. If the Commission wants to take them, I would say that they are at liberty to do so. We will ask the Commission, however, to let us have one of the two copies that they themselves have.

Mr. Woodward: My point is that this is a formal hearing at which the complainants had opportunity to prove their claims. Those claims were put in issue by the complainant. Now these extraneous matters filed somewhere else have nothing to do with this hearing.

Mr. Hillyer: They are here; they are filed right here in Docket No. 12614.

Mr. Woodward: I prefer not to be interrupted in my statement. The only thing is that the claimants should produce competent legal evidence at this hearing. When incompetent evidence is offered we will object to it.

Exam. Hosmer: That is your privilege, but I thought that to shorten this up he could simply allude to these and identify them as the same records now in the files of the Commission and then let Mr. Hillyer state for what purpose he offers them, and when he has finished his statement let counsel for the carriers make their objection on whatever ground they see fit. That is simply to avoid any necessity of formally putting these documents in the record now and duplicating records we already have.

"Now, was that the end of your statement, Mr. Hillyer?

Mr. Hillyer: Yes, we tender the whole business here as a part of the record in this case.

Exam. Hosmer: But you state that they are true copies of documents which are already a part of the files of the Commission and which has been served on the representatives of the defendants in this case?

Mr. Hillyer: Yes.

Exam. Hosmer: Now have you finished your objection, Mr. Woodward?

Mr. Woodward: They are objected to, of course, on two grounds, Mr. Examiner. In the first place, as hearsay evidence; in the second place as immaterial.

Mr. Hillyer: To satisfy one of those grounds we will ask the Commission at the further hearing in this case to issue a subpoena upon these defendants to bring in the originals, in which these claims were made. That will take care of that. We will get the very best evidence then in the record, the original documents.

Exam. Hosmer: I understand that these are segregated by dates so that those which relate particularly to this case can be taken out and that they will not overlap with the shipments in document No. 9977?

Mr. Hillyer: If they are in chronological order as Mr. Park testified, that is true. Did you take the claims down to a certain date and then the balance of them will show shipments of a later date; is that true, Mr. Park? Look at one of them and see.

The Witness: Yes, your statement is correct.

Mr. Woodward: Mr. Examiner, I do not think perhaps I am understood as to the hearsay character of this testimony. It is not that these are copies of some other paper, but the original paper itself is hearsay evidence

"and consequently the copy would be in even more degree hearsay evidence.

Mr. Hillyer: I understand perfectly your point, but you have the originals and I am going to ask the Commission to issue a subpoena on you to bring them in here at the further hearing in this case.

Mr. Woodward: Mr. Hillyer still does not understand my point; those originals are hearsay evidence, Mr. Examiner. These copies of course can be nothing less than hearsay, because if the originals were hearsay they would be hearsay.

Mr. Hillyer. With the reservation, Mr. Examiner, of the right of complainants at a later date to produce the commission men in detail, all of them, so as to identify the portion of the charges that each one of them paid on these shipments, I am through with this witness.

Exam. Hosmer: Cross examine.

Cross-Examination.

Q. (By Mr. Stillwell) Mr. Park, do I understand these documents you have before you are taken from the books of the commission men?

A. And in some instances from the stock yards records.

Q. That is what I thought. I was not quite sure on that. That is all I have.

Q. (By Mr. Woodward) Mr. Park, being copies of other records which are in existence, the original papers which you referred to as filed with the Commission and the carriers, they were also copies of those records, were they not?

A. I don't understand your question. What record do you consider original, and then I will understand you?

"Do you consider the way bill the original record?

Q. Unfortunately I am not on the stand, but these were taken, were they not, from records—

Mr. Hillyer: If you do not understand the question, of course you cannot answer it.

The Witness: These were taken from the original waybills of the railroad companies.

Q. (By Mr. Woodward) And of other records? What other records?

A. And in part from other records. But these were taken from the original waybills of the railroad companies.

Q. That is, they were taken from other records? A. Railroad records.

Q. And the statements filed with the Commission and carriers are compilations taken from other records?

A. From the original waybills and railroad records.

Q. And they were not a reproduction of any one particular record?

A. They were of the original waybills.

Q. But they do not represent a reproduction of those original waybills; they are compilations?

A. They were made by me and under my direct supervision from the original waybills.

Q. But they contain other data than the data shown in the waybills? A. No, sir, I had the original.

Q. Yes, but they contain other data than that shown in the waybills, do they not? A. Well, they show interest.

Q. Then the interest shown is something additional? A. Oh, yes.

Mr. Woodward: So, of course, Mr. Examiner, they are simply hearsay.

Exam. Hosmer: The objection will show on the record.

"Mr. Hillyer: We are going to give you some original records before you get through.

Exam. Hosmer: Any further cross-examination? Any redirect?

Mr. Hillyer: No.

Mr. Woodward: Mr. Park, you mentioned having powers of attorney, I believe. A. Yes, sir.

Q. (By Mr. Woodward) Have you them with you? A. No, sir.

Q. From whom have you powers of attorney? A. The shippers.

Q. By whom, who are they? A. All of the shippers involved in these claims.

Q. You say you haven't the powers of attorney present?

A. No, I have not.

Q. When did you receive that power of attorney?

A. Some of them before the original hearing in May, 1919, and the rest subsequent to that time.

Q. In what form are they?

A. A little statement to the effect that—

Q. No. I mean are they written? A. Yes, they are written.

Q. In writing? A. Yes.

Mr. Woodward: I object, Mr. Examiner, to the evidence of the witness as to the contents in his direct testimony of these powers of attorney unless the written documents are in evidence. That is all.

Exam. Hosmer: The record will show the objection.

Q. (By Mr. Hillyer) I think I ask you on direct examination about the method employed by the Stock Yards Company for the collection of freight charges, including the loading and unloading charges. Will you explain a little more in detail how this charge is col-

"lected and whether on shipments of live stock there is a freight bill rendered as is customary on other freight?

A. There is no freight bill furnished the Commission firm showing the payment by the commission firm of freight charges. This is due to the tremendous amount of business transacted each week in the yards, there being often a million dollars in freight charges paid to Mr. Kemp, and such a tremendous amount of business being transacted that it is almost impossible for the joint agent to furnish the consignees freight receipts. Instead of that there is a statement that I can best explain in this manner: That the waybills and the waybill stubs coming to Mr. Kemp's office are there checked as I explained before, and the stub is sent to the commission firm for information as to the weight of the animals, the commission firm placing upon said waybill stubs the correct weight and also at that time taking a record of the amount of the freight charges to be collected. The waybill stub is returned to Mr. Kemp, who does some more auditing in taking records and such as that, and then send the stub to the Union Stock Yards & Transit Company auditor, Mr. Chase. Mr. Chase's office makes up a statement reading to the commission firm, as for instance the caption Rosenbaum Brothers and the date, and then in the lower left hand corner it shows the railroad hauling the shipment in, then shows the pro number, the identifying number and then the car number and initial and then the consignor, that is the shipper, and then the gross amount of freight charges. The commission firm attaches its check to that statement and returns it to the Union Stock Yards & Transit Company, and that ends the transaction so far as the commission firm is concerned.

The thing I want to get clear in the record and in the minds of you folks is that there is no receipt fur-

"nished the commission firm. He has nothing tangible in any way, shape, form or manner to show that he has paid these freight charges to the railroad or the Stock Yards company, so that if it is such a document Mr. Woodward has been speaking about, it is not in existence, so far as the commission firm knows, because there is no such receipt ever furnished them.

Does that explain it, Mr. Hillyer?

Q. Yes. I will ask you this question: You are familiar with the preparation of reparation claims under rule 5 of the Commission, are you not? A. Yes, sir.

Q. And that in the preparation of such a claim it is customary to attach to the claim the paid freight bills? A. Yes, sir.

Q. And that is received by the Commission as prima facie the original evidence of the payment of the charges therein named? A. Yes, sir.

Q. And while the Commission later on requires the auditor of the rairoad to sign this claim showing the railroad did receive this money, the original evidence of the payment is this receipted freight bill? A. Yes, sir.

Q. Which is in the possession of the man who paid the freight? A. Yes, sir.

Q. Now, as to the shipments of live stock, due to the great volume of the business and the rapidity with which it must be handled, this local custom has grown up of paying the freight charges without any freight bill? A. That is a fact.

Q. Therefore the only document in existence showing the amount—

Mr. Woodward: I object, Mr. Examiner, as a leading question.

"Q. (By Mr. Hillyer — continuing) — of the freight charge would be what? I will change the form of the question. The only document in existence taking the place of the freight bill would be what?

A. The statement furnished the commission firm by the Stock Yards company and returned by the commission firm to the Stock Yards company with the commission firm's check for the amount thereof.

Q. By statement do you mean these individual stubs? Are they not returned attached with the check too? A. No.

Q. Just the statement? It is a statement?

A. Yes, sir, a statement in form as I have read it into the record.

Q. Where are those records at the present time? A. Where are they?

Q. Yes, those original records. A. I understand they are in the possession of the Stock Yards company.

Q. At any rate they are in the possession of some of these defendants?

A. The railroads or their agents.

Mr. Hillyer: Mr. Examiner, in order to complete the record on that, we will ask in the proper way for the Commission to issue a subpoena duces tecum on these defendants to produce these original documents, showing the payment of the freight money, they being the only ones that have them.

Exam. Hosmer: Any cross-examination?

Mr. Andrews: No questions."

EXCERPTS FROM THE TESTIMONY OF JOHN HUBLY, A FARMER AND STOCK MAN, OF MASON CITY, ILLINOIS, ORIGINAL EXHIBIT NO. 8, PAGES 126 TO 134, BOTH INCLUSIVE.

"Q. (By Mr. Hillyer) Where do you live, Mr. Hubly?

A. Mason City, Illinois.

Q. What business are you engaged in? A. Farmer and Stock man.

Q. Do you make shipments of live stock to the Chicago market? A. Yes, sir.

Q. Are you a comparatively large shipper? A. I think so, yes, sir.

Q. How many shipments would you make here in the course of a year? A. From 50 to 75.

Q. Carloads? A. Carload lots.

Q. Did you hear the testimony of Mr. Mosier as to the relation between the farmers and the commission men who represent them on the market here?

A. I heard the testimony this morning. I haven't heard any testimony this afternoon.

Q. I mean the testimony this morning. A. Yes, sir.

Q. You heard him testify as to the relationship of the commission man as factor and agent of the farmer and shipper of live stock? Did you hear that testimony? A. Yes, sir.

Q. Does that statement correctly state your relationship to the commission man who handles your business?

A. As far as I know, it does, yes, sir.

Q. During the time this loading and unloading charge was put upon the shipments to this market, did you protest to your commission representatives this increase in your freight charges? A. Yes, sir, I did.

"Q. And did you authorize your commission man to take every step possible to stop this collection of this charge and to have the charge voided as an unlawful charge? A. Yes, sir.

Q. And to secure for you on your behalf—

Mr. Woodward: I object to the leading form of these questions, Mr. Examiner. They have gone along quite a while.

Exam. Hosmer: Yes, Mr. Hillyer, I will have to ask you—

Q. (By Mr. Hillyer) I will change the form of the question. What did you do in seeking to secure the recovery of this money through your commission man?

A. I asked my commission man to get me a rebate of the 25 cents per car loading and unloading charge.

Mr. Hillyer: That is all.

Exam. Hosmer: Cross-examine.

Cross-Examination.

Q. (By Mr. Woodward) Mr. Hubly, when were you aware that this action was brought before the Interstate Commerce Commission, first? A. When was I aware?

Q. Yes. A. I couldn't tell you the exact date.

Q. Within the last month? A. Six or eight weeks ago.

Q. You knew six or eight weeks ago that this action was being brought before the Commission?

A. Before the Commission in Washington, yes, sir.

Q: So you did not specifically authorize your commission man to bring this suit with the Interstate Commerce Commission?

A. I authorized him to bring this complaint. I couldn't say who it was before.

"Q. But you did not know of this action before the Commission until six or eight weeks age?

A. I didn't know before of this action here, no.

Q. You live at Mason City, Illinois?

A. Yes, sir.

Q. And you are a large shipper, I understand, of live stock, shipping from fifty to seventy-five cars a year?

A. Yes, sir.

Q. Are you a farmer? A. Yes, sir.

Q. Do you raise this live stock yourself? A. Part of it.

Q. How about the rest? A. Ship it in, feed it, and ship it out.

Q. Do you buy that stock which you ship in? A. Yes, sir.

Q. Is all the stock which is shipped yours? A. Yes, sir.

Q. How many shipments did you make during the period involved in this complaint?

A. I couldn't tell you offhand without my record.

Q. How were you paid for these shipments here, or what is the practice of paying the money by commission men?

A. Why, the money was deposited for my account in my home bank.

Q. As I understand you took your stock, two or three cars together sometimes, sometimes one car, and you loaded it yourself?

A. Yes, sir, and shipped it to Chicago.

Q. You load it at Mason City, Illinois? A. Part of it.

Q. Where do you load the other part of it? A. Hubly, Illinois.

Q. And you ship that stock to Chicago? And the

"consignee is some commission man here in Chicago? A. Yes, sir.

Q. What is the name of that commission man?

A. Bowles Brothers Commission Company.

Q. They sell that for you on the Chicago market? A. Yes, sir.

Q. After they sell it they remit to you certain cash, do they not? A. Certain amounts, yes, sir.

Q. Do they give you a statement with each shipment? A. Yes, sir.

Q. A separate statement for each shipment? A. Yes, sir.

Q. Do you carry a running account with them? A. No, sir.

Q. What does that statement show?

A. It shows the number of cattle shipped, the date shipped, where they are shipped from, who they are shipped from, number of cattle, the weight, price per pound, the freight charges and the feed charges and insurance, and the commission charges. I believe that is all I can recall right now. After that is deducted it shows the net.

Q. You are familiar with the prices of cattle? A. Yes, sir.

Q. The price of cattle during the years 1918 and 1919 were higher than they have been for several years, were they not? A. Yes, sir.

Q. Fifty per cent higher than they were in 1916? A. Yes.

Q. And 1916 was still higher than 1915? A. Yes, sir.

Q. That is all.

Exam. Hosmer: Anything further, Mr. Hillyer?

Mr. Hillyer: That is all we have to offer at this time; or I will ask this witness, have you in your pocket an invoice of shipments that you have shipped here that you can introduce?

"A. I have, yes, sir.

Q. (By Mr. Hillyer) Offer it here, please. I think it explains what Mr. Woodward had in mind.

Exam. Hosmer: Do you tender this in evidence? Mr. Hillyer: Yes, sir.

Mr. Woodward: This, I understand, is a copy, Mr. Examiner, of some other document.

Exam. Hosmer: It is an invoice, is it not?

Mr. Hillyer: I don't know whether your understanding is correct or not. I have examined it carefully. It is just the statement that comes in due course of business.

Mr. Woodward: I will have to object to this, Mr. Examiner, on the very good ground of it being secondary evidence when primary evidence is available; in other words, it is hearsay. It shows on its face that it is a copy.

Mr. Hillyer: Who has the original of it?

The Witness: I have the original and that is a copy the commission firm keeps. The commission firm keeps a copy of every bill of sale rendered to a shipper.

Mr. Hillyer: I will ask you to withdraw that and send to me in a few days the original of it.

The Witness: Yes, I have the original of it at home.

Exam. Hosmer: Furnish that in ten days.

Mr. Andrews: What road is Mason City, Illinois, on?

The Witness: Illinois Central and Chicago & Alton.

Q. (By Mr. Andrews) Are all of the shipments upon which you are claiming reparation in this case state shipments? A. Yes, sir.

Q. They moved over state roads and routes to Chicago? A. Yes, sir."

PAGE TAKEN FROM ORIGINAL EXHIBIT No. 37.

Reparation in The Chicago Live Stock Exchange Loading and Unloading Case

Claim of The Chicago Live Stock Exchange under Decision in Docket No. 1118.

Destination, Union Stock Yards, Chicago, Illinois.

D J 19338 · C. M. & St. P. Jan. 1, 1919. · Sheet #4

Date of Delivery	CAR		WAYBILL		Originating Station	Consignor	Consignee	Route	Commodity	Reparation Claimed (in cents)	Interest at 6% (in cents)
	Initial	Number	No	Date							
12/28	St P	100313	42	12/27	La Motte	J B Ludwig	A Burnett	St P	hogs	25	02
12/30	U P	46525	41	12/28	Linden	G E Care	W Mahoney	"	"	25	02
12/31	M K T	49523	72	12/30	Clayton	H C Bothmier	V N Lawler	"	"	25	02
12/30	R I	170149	80	12/29	Ridgway	Am Coop As	L Spencer	"	"	25	02
"	St P	2739	79	"	"	"	"	"	"	25	02
"	"	90437	116	"	No English	A. G. & Ballard	Bracl L S	"	"	25	02
"	"	35656	33	"	Cambridge	Inglis B	"	"	"	25	02
12/29	U P	36801	230	12/28	Waukon	Waterville E. C	L Spencer	"	"	25	02
12/30	PKCNW	16991	164	"	Decorah	Am. Coop Ass	"	"	"	25	02
"	P S	100417	83	12/29	New Hampton	Chichasm Eq.	"	"	"	25	02
"	St P	56698	259	12/28	Lynnville	J A Williams	Wood B	"	sheep	25	02
"	St P	9679	257	"	"	Roy Williams	"	"	"	25	02
"	"	67759	258	"	"	"	"	"	"	25	02
"	"	90343	....	.....	Rosbrook	A Vanderschel	Rappal B	"	"	25	02
"	C G W	6593	54	12/29	Parnell	R G Shnill	Miller W W	"	"	25	02
"	St P	90131	53	"	"	"	"	"	"	25	02
"	U P	37493	43	12/28	Linden	C K Thombury	W R Smith	"	"	25	02
"	St L S X	2184	74	"	Dexter	F M Pollard	Wood B	"	cattle	25	02
"	St L W	8105	75	"	"	"	"	"	"	25	02
"	St P	101024	42	"	Matawan	J Mc Ardle	"	"	"	25	02
"	M St L	37009	41	"	"	"	"	"	"	25	02
"	TNO	61966	43	"	"	"	"	"	"	25	02
12/31	St P	751	272	12/29	Fairmont	R C Hunt	Pritchard	"	"	25	02
"	C N W	4989	89	12/28	Mapleton	T B Taylor	Natl L S	"	"	25	02
12/30	R I	500322	119	"	Houston	J J Sliter	Hefner C	"	"	25	02
"	CStPMO	25573	27	"	Huntley	E C Mauss	Rappal	"	"	25	02
12/29	R I	500202	145	"	Preston	Preston Sp. Ass.	Stand. L. S.	"	"	25	02
"	St P	11351	102	"	Spring Grove	G P Armston	L Spencer	"	"	25	02
12/30	Soo	29447	29	"	Hokah	Hok Sp. Ass	A Piatt	"	hog	25	02
"	I G N	8173	30	"	"	"	"	"	"	25	02
"	Pa	660034	219	"	Wells, M	T R Markey	Rappal	"	"	25	02
12/29	R I	74008	142	"	Caledonia	Peoples Coop	Conklin	"	"	25	02
"	"	500140	141	"	"	P Schiltz	"	"	"	25	02
"	"	100217	104	"	Spring Grove	Spg. Gr. Assn	"	"	mix	25	02
"	B4	20206	63	"	Canton	F Wichert	Bunker & S	"	hogs	25	02
12/30	N W	614	34	"	Prosper	L A Knowlton	"	"	"	25	02
"	St P	89063	15	"	Dakota	O Vier	Stand. L S	"	"	25	02
12/28	R I	76349	82	12/27	Harmony	Far. Shpg Ass	L Spencer	"	"	25	02
12/29	Q	68203	103	12/28	Spring Grove	G P Arnston	"	"	"	25	02
"	"	63650	102	12/26	Houston	Far. Ass	Stand. L S	"	"	25	02
									Total.....	10.00	.80

EXCERPT FROM EXHIBIT No. 1, PAGE 19, TARIFF ON LIVE STOCK OF THE UNION STOCK YARD & TRANSIT COMPANY, I. C. C. No. 2 ISSUED APRIL 16, 1917, EFFECTIVE MAY 21, 1917:

"The charge made by this Company for the service (as a Carrier's Agent) of loading and unloading Live Stock at the Union Stock Yards, of Chicago, Ill., is as follows:

'For loading 75 cents per car of any capacity.
For unloading 50 cents " " " " " "'"

EXCERPTS FROM EXHIBIT No. 1, PAGES 29 TO 37, BOTH INCLUSIVE, L. A. LOWREY'S TARIFF No. 20-J, I. C. C. No. 37, NAMING LOCAL AND JOINT TERMINAL CHARGES, RULES AND REGULATIONS FROM OR TO POINTS WITHIN THE CHICAGO DISTRICT.

Index No.	STATION.	TERMINAL CARRIER.	FACILITIES.	ISSUING CARRIERS. A.T.&S.F.	B.&O.	B.&O.C.T.	C.&O.of Ind.	C.&A.	C.&E.I.	C.&E.	C.&N.W.	C.B.&Q.	C.G.W.	C.I.&L.	C.M.&St.P.	C.R.I.&P.
				RATE BASES. (For explanation, see pages 70 to 74, incl.)												
899	*STONY ISLAND.....ILL.	N. Y. C. & St. L.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Freight Houses....	2	...	...	...	2	2	...	2	2	2	2	2	2
901	*SUMMERDALE.....ILL.	C. & N. W.....	(34)Industries.....	1	1	1	1	1	1	1	4	1	1	1	1	1
			(34)Team Tracks....	1	1	1	1	1	1	1	4	1	1	1	1	1
			(34)Freight Houses...	2	2	...	2	2	2	2	4	2	2	2	2	2
903	*SUMMIT.....ILL.	C. & A.....	Industries.....	1	1	1	1	4	1	1	1	1	1	1	1	1
			Team Tracks.....	1	1	1	1	4	...	1	1	...	1	1	1	1
			Freight Houses....	...	2	...	2	4	2	2	2	...	...	2	2	2
905	*TRACY.....ILL.	C. R. I. & P.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	4
			Team Tracks.....	1	1	1	1	1	1	1	1	1	1	1	1	4
907	*TRACY AVE.....ILL.	B. & O. C. T.....	Industries.....	1	1	4	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	1	4	1	1	1	1	1	1	1	1	1	1
909	*UNION STOCK YARDS.ILL.	C. J.....	Industries.....	6	6	6	6	6	6	6	6	6	6	6	6	6
			Team Tracks.....	6	6	6	6	6	6	6	6	6	6	6	6	6
			(1)Freight Houses...	6	6	...	6	6	6	6	6	6	6	6	6	6
911	*WASHINGTON HEIGHTS.....ILL.	C. R. I. & P.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	4
			Team Tracks.....	1	1	1	1	1	1	1	1	1	1	1	1	4
			Freight Houses....	...	2	...	2	2	2	2	2	2	2	2	2	4
913		P. C. C. & St. L.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	...	1	...	(3)1	(3)1	...	1	1	1	...	1	1
			Freight Houses....	2	2	...	2	2	2	2	2	2	2	2	2	2
915	*WEBER.....ILL.	C. & N. W.....	(3)Industries.....	1	1	1	1	1	1	1	4	1	1	1	1	1
917		C. & W. R.....	(3)(9)Industries.....	1	1	1	1	1	1	1	(47)5	1	1	1	1	1
			(3)(9)Team Tracks...	1	1	1	1	1	1	1	(47)5	1	1	1	1	1
921	*WEST HAMMOND....ILL. (Calumet Park.)	I. H. Belt.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	1	1	1	1	1	1	1	1	1	1	1	1
923	*WEST HAMMOND....ILL.	M. C.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	...	1	...	1	1	...	1	1	1	...	1	1
924		B. & O. C. T.....	Industries.....	1	1	4	1	1	1	1	1	1	1	1	1	1
925		C. W. P. & S.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Freight Houses....	2	2	...	2	2	2	2	2	2	2	2	2	2
927		C. C. C. & St. L.....	Industries.....	...	...	...	...	...	...	...	...	...	...	...	...	...
			Team Tracks.....	...	...	...	...	...	...	...	...	...	...	...	...	...
			Freight Houses....	...	...	...	...	...	...	...	...	...	...	...	...	...
929	*WEST PULLMAN.....ILL.	I. C.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Freight Houses....	2	2	...	2	2	2	2	2	2	2	2	2	2
931		P. C. C. & St. L.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	...	1	...	(3)1	(3)1	...	1	1	1	...	1	1
			Freight Houses....	2	2	...	2	2	2	2	2	2	2	2	2	2
933	*WEST 22D ST.....	Belt.....	Industries.....	1	1	1	1	1	1	1	1	1	1	1	1	1
			Team Tracks.....	1	1	1	1	1	1	1	1	1	1	1	1	1

(47)Trap cars (see Rule 34) will be subject to minimum weights, minimum charges, and plus charges specified in Rate Basis No. 1.

For application of rates, explanation of abbreviations, notes, other reference marks, rules or regulations and exceptions to application of rates, refer to pages 6 to 26, inclusive.

RATE BASIS—Continued

Rate Basis No.	FROM OR TO FACILITIES WITHIN THE CHICAGO DISTRICT. (As named on pages 28 to 69, incl.)	TRAFFIC IN	APPLY
4	Industries	Carloads Trap Cars (see Rule 5), subject to minimum weights, minimum charges and plus charges specified in Rate Basis No. 1	Chicago, Ill., rates, unless specific rates are published in tariffs lawfully on file with the Interstate Commerce Commission or State Commissions.
	Team Tracks	Carloads	
	Freight Houses	Carloads Trap Cars (see Rule 5), subject to minimum weights, minimum charges and plus charges specified in Rate Basis No. 1 Less than Carloads	
5	Apply Chicago, Ill., rates.		

BASIS FOR RATES TO AND FROM FACILITIES OF THE CHICAGO JUNCTION RAILWAY.

Rate Basis No.	TO OR FROM THE FOLLOWING CARRIERS.	FREIGHT TRAFFIC (Except Live Stock.)		LIVE STOCK FROM OR TO (as noted) INDUSTRIES, CHUTES AND SIDINGS.						CARRIERS AS SHOWN WILL PAY THE UNION STOCK YARDS & TRANSIT CO.'S CHARGES AS FOLLOWS:		
		CARLOAD AND TRAP CARS.	LESS THAN CARLOAD. From Freight Houses Index Nos. 221, 223 and 909. (Out-bound only.)	CARLOADS.				LESS THAN CARLOADS. (See note below)		LOADING CHARGES.	UNLOADING CHARGES.	WEIGHING CHARGES.
				Out-bound.		In-bound.						
				Apply.		Apply.		Apply.				In Cents Per Car.
		Apply Rate Basis No.	Apply Rate Basis No.	Rate Basis No.	Plus.	Rate Basis No.	Plus.	Rate Basis No.	Plus.	In Cents Per Car.	In Cents Per Car.	Out-bound.
	A.T.& S.F.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
	(28)B.& O.	1	2	5		5	$1.00	5	$3.00	50	25	10
	B.& O.C.T.	1		5						50	25	10
	C.& O. of Ind.	1	2	5		5	$1.00	5	$3.00	50	25	10
	C.& A.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
	C.& E.I.	1	2	(20)5	(18)$2.00	(20)5	(18)$2.00	(20)5	(18)$2.00	50	25	
				(19)5		(19)5	$1.00	(19)5	$3.00	50	25	
	(28)C.& E.	1	2	5		5	$1.00	5	$3.00	50	25	10
	C.& N.W.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
	C.B.& Q.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
	C.C.C.& St.L.	1	2	5		5	$1.00	5	$3.00	50	25	10
	C.G.W.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
	C.I.	1	2	5		5	$1.00	5	$3.00	50	25	10
	C.M.& St.P.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
6	C.R.I.& P.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
	C.T.H.& S.E.	1	2	(22)5	(18)$2.00	(22)5	(18)$2.00	(22)5	(18)$2.00	50	25	
				(21)5		(21)5	$1.00	(21)5	$3.00	50	25	10
	(28)G.T.	1	2	5		5	$1.00	5	$3.00	50	25	10
	I.C.	1	2	(16)5	(18)$2.00	(16)5	(18)$2.00	(16)5	(18)$2.00	50	25	
				(17)5		(17)5	$1.00	(17)5	$3.00	50	25	10
	I.H. Belt	1	2	5		5	$1.00			50	25	10
	(28)M.C.	1	2	5		5	$1.00	5	$3.00	50	25	10
	M.St.P.&S.S.M.	1	2	5	(18)$2.00	5	(18)$2.00	5	(18)$2.00	50	25	
	(28)N.Y.C.	1	2	5		5	$1.00	5	$3.00	50	25	10
				(16)5	(18)$2.00	(16)5	(18)$2.00	5	(18)$2.00	50	25	
	(28)N.Y.C.&St.L.	1	2	5		5	$1.00	5	$3.00	50	25	10
	(28)Penna. Co.	1	2	5		5	$1.00	5	$3.00	50	25	10
	(28)P.M.	1	2	5		5	$1.00	5	$3.00	50	25	10
	(28)P.C.C.& St.L.	1	2	5		5	$1.00	5	$3.00	50	25	10
	(28)Wabash	1	2	(16)5	(18)$2.00	(16)5	(18)$2.00	(16)5	(18)$2.00	50	25	
				(17)5		(17)5	$1.00	(17)5	$3.00	50	25	10

NOTE.—On L. C. L. shipments of horses and mules for delivery at express chutes of the C. J. Ry., Rate Basis mentioned will only apply when the revenue to the road haul carrier equals or exceeds $15.00 per shipment plus the established L. C. L. arbitraries and in instances where charges are less than $15.00 per shipment freight charges will be advanced to $15.00 plus the established L. C. L. arbitraries.

For application of rates, explanation of abbreviations, notes, reference marks, rules and regulations and exceptions to application of rates, refer to pages 6 to 26, inclusive.

EXCERPT FROM TESTIMONY OF H. W. BEYERS, ASSISTANT FREIGHT TRAFFIC MANAGER, CHICAGO & NORTH WESTERN RAILROAD, EXHIBIT NO. 7, PAGES 1249, AND 1252.

Page 1249:

"Q. (By Mr. Norton.) The second question relates to the tariff situation, about which the Commission wants information, and which has not been touched by the complainants or interveners, and I want you to answer that particularly with reference to the Chicago Junction Railway Company and its situation in this matter.

A. I think I can explain the tariff situation briefly and to the point by taking Chicago & North Western tariffs as typical. The plan of the carriers throughout is the same.

The Chicago & North Western I. C. C. 7698, as of June 5, 1916, still in effect; also I. C. C. 7713, as of September 20, 1915, still in effect; these tariffs name rates on live stock between various stations, including rates from Illinois, Wisconsin, Michigan, Iowa, Minnesota, North and South Dakota, and from the Missouri River to Chicago. These tariffs clearly stipulate that the rates named therein apply only on shipments loaded or delivered on Chicago and North Western Railway tracks, or on shipments received from or delivered to connecting lines, and that for the rate basis applicable from or to points located on connecting lines within the Chicago district see Lowrey's I. C. C. No. 32, supplements thereto and reissues thereof."

Page 1252:

"Under the Lowrey tariff the Chicago Junction Railway is a participating carrier. The Chicago and North Western Railroad, like other road haul carriers, is an issuing carrier. The Lowrey tariff indicates the Union Stock Yards as a station on the Chicago Junction Railroad, at which are located industries, team tracks and freight houses.

In order to determine a rate on live stock to the Union Stock Yards, Chicago, there is indicated the application of rate basis No. 6. Rate Basis No. 6 advertises the application on inbound movements of the Chicago rate plus a terminal charge of $2 per car to or from industries, chutes and sidings. It

also indicates that the railroads as shown will pay the Union Stock Yard & Transit Company's charges as follows: loading charges, 50 cents per car; unloading charges 25 cents per car.

Under this tariff the shipper has before him everything that entered into the transaction of taking a car to the chutes or sidings at the Union Stock Yards, and indicates to the shipper that his charge will be the flat Chicago rate plus $2 per car terminal charge, and that the carriers as indicated will pay the charges of the Union Stock Yard & Transit Company for loading or unloading, which was the situation up to the time that the Union Stock Yard & Transit Company changed their tariff basis by advancing it 25 cents per car, both in the matter of loading and unloading charges."

EXCERPT FROM EXHIBIT 1, UNNUMBERED PAGE BETWEEN PAGES 69 AND 70 ENTITLED RULES AND SPECIAL INSTRUCTIONS, OFFICIAL CLASSIFICATION No. 44:

"Unless otherwise provided when property is transported subject to the provisions of the Official Classification, the acceptance and use are required, respectively, of the 'Uniform Bill of Lading,' 'Straight' or 'Order', * * * 'Export Bill of Lading,' * * * 'Uniform Live Stock Contract' * * *."

EXCERPT FROM EXHIBIT 1, PAGE 72, OFFICIAL CLASSIFICATION No. 44:

"SEC. 5. The shipper at his own risk and expense shall load and unload said live stock, * * *".

EXCERPT FROM EXHIBIT 1, PAGE 76, OFFICIAL CLASSIFICATION No. 44:

"8. It should be understood in receiving Live Stock of any description for transportation, that the actual delivery does not commence until the stock has been placed in the car, and the responsibility of the Railroad Company shall cease upon the delivery of the car at the station to which it is consigned. The consignor and the consignee are responsible for the loading and unloading of the same, the carrier assuming no liability whatever in regard to such loading and unloading."

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, FREDERICK G. CAMPBELL, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages numbered from 1 to 172 inclusive, contain a true copy of the following:

Excerpts from original exhibit No. 6,
pages 10 to 38, both inclusive,
pages 316 to 341, both inclusive,
pages 472 to 476, both inclusive,
pages 496 to 498, both inclusive,
pages 504 to 512, both inclusive,
pages 535 to 539, both inclusive,
pages 542 to 544, both inclusive,
pages 571 to 583, both inclusive;

Excerpts from original exhibit No. 7,
page 861,
pages 890 to 892, both inclusive,
pages 975 to 979, both inclusive,
pages 1027 to 1032, both inclusive;
pages 1207 to 1212, both inclusive;
pages 1251 to 1253, both inclusive;

Excerpts from original exhibit No. 8,
pages 25 to 96, both inclusive,
pages 96 to 126, both inclusive,
pages 126 to 134, both inclusive;

Excerpt consisting of one page from original exhibit No. 37,

Excerpts from exhibit No. 1,
page 19,
page 35,
page 37;

Excerpts from exhibit No. 7,
page 1249,
page 1252;

Excerpts from exhibit No. 1,
Unnumbered page appearing between 69 and 70,
page 72,
page 76;

In the case of
George J. Adams and A. W. Kitchen, Copartners Trading as Adams & Kitchen, *et al.*,
Appellants,
vs.
Andrew W. Mellon, Director General of Railroads, etc., *et al.*,
Appellees,

October Term, 1930.
No. 4462.

which said original exhibits from which these excerpts were taken were certified to this court from the District Court of the United States for the Northern District of Illinois, Eastern Division, and which said original exhibits are certified to the Supreme Court of the United States under two separate certificates, pursuant to order of this court entered on the fourth day of November, 1931.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this sixteenth day of December, A. D. 1931.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)